



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 28 अगस्त, 2015 / 6 भाद्रपद, 1937

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 25th August, 2015

No: Sharm (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh:—

| Sr. No. | Ref. No. | Petitioner | Respondent | Date of Award/ Order |
|---------|----------|------------------------|----------------------------|----------------------|
| 1. | 256/14 | Suman Prakash | M/s Govind Raj Project | 05-06-2015 |
| 2. | 345/14 | Muninder | M/s Govind Raj Project | 05-06-2015 |
| 3. | 230/14 | Mohinder Singh | D.F.O. Bharmour | 05-06-2015 |
| 4. | 256/10 | Naresh Kumar | HPPWD, Chamba | 09-06-2015 |
| 5. | 189/15 | Narda Devi | E.E.HPPWD, J/Nagar | 30-06-2015 |
| 6. | 352/14 | Subhash Chand | E.E. HPPWD, J/Nagar | 30-06-2015 |
| 7. | 312/14 | Krishan Kant Chairman, | M.G. Polytech | 30-06-2015 |
| 8. | 228/14 | Ramesh Chand | M/s Shivansh Motors Pvt. | 30-06-2015 |
| 9. | 225/14 | Dharam Pratap | M/s Shivansh Motors Pvt | 30-06-2015 |
| 10. | 226/14 | Pawan Kumar | M/s Shivansh Motors Pvt | 30-06-2015 |
| 11. | 146/13 | Sher Singh | Chairman M.G. Croup | 30-06-2015 |
| 12. | 60/13 | Om Parkash | D.F.O. S/Nagar | 30-06-2015 |
| 13. | 61/13 | Raj Kumar | D.F.O. S/Nagar | 30-06-2015 |
| 14. | 49/13 | Ram Lal | S.D.O. Civil Kullu | 30-06-2015 |
| 15 | 81/12 | Jahli Ram Thakur | M/s International Research | 30-06-2015 |
| 16 | 01/14 | Roshan Lal | D.F.O. Joginder Nagar | 30-06-2015 |
| 17 | 02/14 | Chamaru Ram | D.F.O. Joginder Nagar | 30-06-2015 |
| 18 | 03/14 | Meera Devi | D.F.O. Joginder Nagar | 30-06-2015 |
| 19 | 32/14 | Biri Singh | D.F.O. Joginder Nagar | 30-06-2015 |
| 20 | 33/14 | Sohan Lal | D.F.O. Joginder Nagar | 30-06-2015 |
| 21 | 86/14 | Kali Dass | D.F.O. Joginder Nagar | 30-06-2015 |
| 22 | 87/14 | Netar Singh | D.F.O. Joginder Nagar | 30-06-2015 |
| 23 | 242/13 | Dharmeshwar Dutt | D.F.O. Joginder Nagar | 30-06-2015 |

By order,
Sd/-

Pr. Secretary (Labour & Employment) .

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)**

Ref : No. 256/ 2014

Sh. Suman Prakash s/o Shri Puran Chand, r/o V.P.O. Chhatrari, Tehsil & District Chamba,
H.P. . . .Petitioner.

Versus

The Executive Director, M/S Govind Raj Projects Private Limited, Near Fishery Farm
Sultanpur, Chamba, H.P. . . .Respondent.

05-06-2015 Present: None for the petitioner.

Smt. Bandna Devi, adv. vice of Sh. D.P. Malhotra, adv. counsel.

for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

05-06-2015 Present : None for the petitioner.

Smt. Bandna Devi, adv. vice of Sh. D.P. Malhotra, adv. counsel.

for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.05 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
05-06-2015

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)**

Ref : No. 345/ 2014

Sh. Muninder s/o Shri Dalip Chand, r/o V.P.O. Chhatrari, Tehsil & District Chamba, H.P.
. . .Petitioner.

Versus

The Executive Director, M/S Govind Raj Projects Private Limited, Near Fishery Farm
Sultanpur, Chamba, H.P. . . .Respondent.

05-06-2015 Present : None for the petitioner.

Smt. Bandna Devi, adv. vice of Sh. D.P. Malhotra, adv. csl.

for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite knowledge. It is 11.34 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

05-06-2015 Present: None for the petitioner.

Smt. Bandna Devi, adv. vice of Sh. D.P. Malhotra, adv. csl.

for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.07 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
05-06-2015

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)**

Ref. No. : 230/2014
Date of Institution : 14.05.2014
Date of decision : 05.06.2015

Shri Mohinder Singh s/o Shri Machla Ram, r/o V.P.O. Parngghala, Tehsil Bharmour, District Chamba, H.P. ...*Petitioner.*

Versus

The Divisional Forest Officer, Bharmour Forest Division Bharmour, District Chamba, H.P. ...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Mohinder Singh, S/O Shri Machla Ram, R/O V.P.O. Parngghala, Tehsil Bharmour, District Chamba, H.P. during 1998 to 2008, 2010 and finally during December 2011/January 2012 by the Divisional Forest Officer, Bharmour Forest Division Bharmour, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged by respondent w.e.f. 01.01.1997 in Khund Nursery under Forest Beat Parngghala, Forest Range and Forest Division Bharmour on muster roll, on daily waged basis for which no appointment order was given while engaging him in service. The petitioner claimed to have worked till 2011 when his services were illegally terminated and that during entire service, respondent had given fictional breaks so that the petitioner could not complete 180 days in a calendar year fixed for tribal area Bharmour. It is further alleged that the services of petitioner were finally terminated on 1.1.2012 without any reason but the persons junior to him were retained in service by the respondent who were continuously working under the respondent. It is alleged that petitioner had made various requests with the respondent department for wrongly giving him fictional breaks but nothing had been heard by the concerned authorities and thereafter petitioner had made demand notice to Labour Officer-cum-Conciliation Officer, Chamba. Averments made in the claim petition further reveal that several persons working along-with petitioner had been engaged without being given any breaks. Even at the time of giving fictional breaks to the petitioner from the year 1997 onwards, the principle of ‘Last come First go’ had not been followed by respondent as the persons junior to him namely Rajesh Kumar who was appointed in 2004, Jaram Singh in 2003 and Kashmir Singh in 2004 had been engaged by the respondent without breaks and thus, respondent violated the provisions of Section 25-G of the Industrial Dispute Act, 1947 (hereinafter referred to as the Act for brevity). Claiming that all the above named workmen had continued to work with respondent department but petitioner was deliberately ignored by respondent giving fictional breaks with ulterior motive so that petitioner could not be regularized despite having complete requisite number

of days in 12 calendar months in preceding in eight years. It is alleged that even at the time of termination of the services of petitioner department had not given any notice and at the same time, no inquiry had been conducted prior to his retrenchment. Thus, the act of respondent in terminating of services of petitioner was null and void and ab-initio. It is alleged that consequent upon the termination of the services of petitioner in the year 2012, petitioner had raised demand notice against the respondent department for which the copy had been forwarded to Labour Officer, Chamba for necessary action and during the conciliation, the matter was not settled amicably and that failure report under Section 12(4) of the Act has been referred to appropriate Govt. for making reference. Even during the pendency of dispute before conciliation officer as well as in this court, the services of petitioner had been engaged and disengaged on account of fictional breaks given by the department without taking permission under Section 33-C (2) of the Act and lastly the services of petitioner had been disengaged on account of fictional break given by the department w.e.f. 01.11.2013 without notice as required under Section 25-F (a) of the Act. Accordingly, petitioner has prayed that the period of fictional breaks from 1997 onwards be set aside and respondent be directed to pay wages for the break period. The petitioner further prays that respondent be directed to count the intermittent break period which were given to petitioner during the entire service period and counted for calculation of continuous service of 180 days in each calendar year and regularize the services of petitioner as per the eight years regularization policy of state government along with all consequential benefits.

4. Respondent contested petition filed separate reply inter alia taken preliminary objections of maintainability, the present claim petition having become infructuous regarding final termination of petitioner as he was still working with the respondent department. On merits, it is submitted that petitioner was not engaged as daily waged beldar but he was engaged for seasonal work from the year 1997 and that petitioner had worked with the respondent department till 12/2011 and thereafter petitioner had left the work of his own accord and remained absent till May, 2013. It is further stated that vide letter dated 13.5.2013 petitioner was informed to resume work at Khund Nursery pursuant petitioner had joined the same and mark his presence there. It is emphatically denied that respondent had disengaged the petitioner rather he was still working with the respondent department and no fictional breaks were ever given to him. It is contended that petitioner of his own use to come and go without intimating and that he had worked with respondent department intermittently. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder and reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner has sworn an affidavit Ex. PW1/A, Mark-A copy of letter dated 23.4.2012, Mark-B is the application dated 8.5.2012 and Mark-C is the copy of demand notice dated 7.5.2013 and closed her evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Summan Ohri, the then Divisional Forest Officer tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B is the mandays chart of petitioner and Ex. RW1/C is the copy of letter dated 13.5.2013 from Range Forest Officer, Bharmour to petitioner and another regarding report on duty and closed evidence.

7. I have heard the Authorized Representative representing petitioner and ld. Dy. D.A. for respondent and have gone through the case file carefully.

8. From the contentions raised, issues were framed by my ld. predecessor for determination on 17.9.2014 which are as under:

Whether time to time termination of the services/fictional breaks of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.

Whether the present claim is not maintainable in the present form?

...OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Factum of petitioner having been appointed as daily wager on muster roll by the respondent in January, 1997 is not in dispute. It is also not in dispute that eligibility for regularization of workers in respect of tribal area was to be on the basis of number of minimum requisite days and for Bharmour Division it was 180 days. It is admitted case of petitioner that petitioner had worked since January, 1997 but had been deliberately given fictional breaks by respondent so that he did not complete 180 days to get benefits of Section 25-B of the Act. The plea of respondent on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty as he willfully absented several times from it. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that he willfully absented from his duties is devoid of merit as there is nothing in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own and worked and he left the work of his own sweet will. The plea of petitioner, on the other hand, remains that fictional breaks were given to him and that several persons junior to her namely Rajesh Kumar, Jaram Singh and Kashmir Singh have been continuously working with respondent department and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/B would reveal that in the year 1997 petitioner had worked for 104 days, 152 days in the year 1998, 91 days in the year 1999, 129 days in the year 2000, 112 days in the year 2001, 112 days in the year 2002, 165 days in the year 2003, 211 days in the year 2004, 191 days in the year 2005, 130 days in the year 2006, 182 days in the year 2007, 195 days in the year 2008, 256 days in the year 2009, 199 days in the year 2010, 262 days in the year 2011, 214 days in the year 2013 and 121 days in the year 2014. It can be noticed that in the year 1997 petitioner has worked for 104 days and in the year 2006 petitioner is shown to have worked only for 130 days i.e. less than 180 days, whereas for other remaining years he had worked for more than 180 days. Thus, this break being within a period of seven years from his termination was definitely a fictional break as except from the years 1997 to 2003 in remaining years he had worked for more than 180 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis more so when it has been admitted by respondent department in its reply that the persons who had completed the criteria for regularization have been regularized but the petitioner claimed that he has been deprived off his legitimate right for regularization till now. Needless to mention that as per government of H.P. notification, those workmen were to be regularized who had worked for more than 180 days in tribal area of Bharmour continuously for seven years or more and has not been allowed to meet out of this criteria by giving fictional breaks.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1997 to 2012 by giving fictional break besides he was disengaged from service by the department in January, 2012 without any notice as required under Section 25-F (a) of the Act whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 180 days in a calendar year. In cross-examination, he had denied that during the entire service period he of his own came on duty and for said reasons he could not complete 180 days.

13. RW1 Shri Summan Ohri while proving his affidavit Ex. RW1/A has admitted in cross-examination that seniority list was not enclosed with the reply. He has admitted that in Bharmour area working of 180 days is to be established to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in January, 1997 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks during his entire service period but he could not plead as no corresponding record has been produced by the respondent so as to establish that on his absence any notice was issued and the version of RW1 that petitioner came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. The plea of respondent that petitioner continued abandoning work cannot be accepted as no notice or charge sheet was raised for absence. Since absence from duty is misconduct, respondent should have given notice but there is no iota of evidence which makes stand taken by respondent doubtful. As such, the plea of fictional break given to the petitioner during his entire service period get substantiated not only from documentary evidence on record but from testimony of RW1 as well. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, he cannot be discriminated arbitrarily. It is thus established on record that respondent department had given fictional breaks to the petitioner time and again during entire service period as stated above and therefore entire break period required to be treated as continuous service for calculating of 180 days for regularizing persons working in Bharmour area. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1997 to 2012 was illegal and unjustified. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1997 to 2012 was certainly illegal and unjustified in contravention of provisions of Sections 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. The petitioner has failed to discharge initial onus of proof qua not having been gainfully employed during his forced idleness, no back wages are being awarded in favour of petitioner. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 2

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

RELIEF

15. For all the aforesaid reasons discussed above, it is thus held that the petitioner was in continuous, uninterrupted service with the respondent from the date of his initial engagement. The breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed partly and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wage as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 256/2010
Date of Institution : 25.10.2010
Date of Decision : 09.06.2015

Shri Naresh Kumar s/o Shri Mohini Ram, r/o Village Gailla, P.O. Sarol, Tehsil & Distt. Chamba, H.P. . . .Petitioner.

Versus

The Executive Engineer, HPPWD Division (B&R) Chamba, Distt. Chamba, H.P. . . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Naresh Kumar s/o Sh. Mohni Ram by the Executive Engineer, HPPWD (B&R) Division Chamba, Distt. Chamba, (H.P.) w.e.f. December, 2004 and retaining the junior workmen as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that before being disengaged by respondent, petitioner abovenamed had rendered services of more than 10 years continuously with the respondent however the case of petitioner/claimant remains that vide letter no. PWC-Court case/2004-05-10973-77 dated 29.11.2004 his services had been disengaged as daily wager. It is alleged that petitioner had filed O.A. (D) 232/2003 before the Hon'ble Administrative Tribunal, H.P. at Dharamshala which was disposed of with the direction to the respondent department to not give fictional breaks to petitioner and also to not terminate daily paid services of petitioner except in accordance with law. The grievance of petitioner remains that respondent department had taken wrong meaning of the order passed by the Hon'ble Administrative Tribunal H.P. in O.A. (D) No. 232/2003. It is alleged that not only respondent was disengaged but the services of persons who had filed O.A. (D) 581/2001 titled as Umesh Handa and ors. vs. State of H.P. had been disengaged. It is alleged that workers namely Umesh Hand and others however were re-engaged later. Similarly, another O.A. (D) no.183/2000 titled as Tilak Raj and others vs. State of H.P. similar order had been passed but these persons had been allowed to complete 240 days in each calendar year and regularized their services in violation of policy framed by respondent department which amounted to discrimination with the petitioner. It is further claimed that respondent department had disengaged petitioner without any reason without keeping in mind that some are disengaged and reengaged on the extraneous consideration while some of the junior already in service of respondent department whose names Umesh Handa s/o Krishan, Chaman Lal s/o Sh. Bhagi, Vikarmo s/o Chand, Jarmo s/o Nakul, Beli Ram s/o Raffal, Tilak Raj s/o Rakhinu Ram, Tilak Raj s/o Teju Ram, Ramesh s/o Bias Dev, Bishan Dass s/o Machlu, Sanjay Kumar s/o Baldev Ram and Ganesh s/o Brij Lal had been retained in service. It is alleged that respondent department had deliberately given fictional breaks to the petitioner when he was working with the respondent department besides that respondent department had retained junior persons to that of petitioner which was in violation of provisions of Section 25-G of the Industrial Disputes Act. It is claimed that respondent had been allowing junior persons to complete 240 days in each working year and regularize daily paid services but services of petitioner had been disengaged without assigning any reason. Thus, petitioner claims reinstatement/reengagement along-with full back wages, seniority, past service benefit and compensation in the interest of justice.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that O.A. (D) 232/2003 was decided by Hon'ble Administrative Tribunal H.P. in pursuance to which notice no. 10973-77 dated 29.11.2004 had been issued but maintained that these notices were issued to the petitioner and other similarly situated persons due to non-availability of funds, after following of the principle of 'Last come First go'. It is also contended that for the purposes of regularization a workman as per the prevailing policy of the state government has to complete continuous service of 240 days in each year but petitioner in this case is stated to have worked intermittently as can be noticed from mandays chart. It is also stated that issue with regard to fictional breaks had been set aside by Hon'ble Administrative Tribunal H.P. vide judgment dated 26.2.2004 and that no fictional breaks was ever be given to petitioner by respondent and thereafter petitioner continued to work till January, 2005 per availability of work and funds who finally abandoned the service/job on 2nd January, 2005 for which muster roll no. 722 dated 31.12.2004 for

the month of January, 2005 was issued. It is claimed that petitioner was gainfully employed who was involved in agricultural activities and had abandoned the job of his own. It is denied that any person junior to petitioner has been reengaged. It is also contended that since petitioner had abandoned the job voluntarily, petitioner was claiming parity with the workmen who had worked continuously with the respondent. It has been emphatically denied that petitioner was not allowed to complete 240 days of continuous service deliberately by respondent. Accordingly, petition was sought to be dismissed being meritless.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It has been specifically pleaded that petitioner has been discriminated by respondent department as the services of Beli Ram, Chaman Lal, Jarmo and Tilak have been reengaged by the respondent however so denied to have left or abandoned his service as pleaded by respondent.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the copy of notice dated 29.11.2004 and closed evidence. Repudiating petitioner's evidence on the other hand, respondent examined RW1 Shri D.S. Pathania, the then Executive Engineer, HPPWD, tendered/proved Ex. RW1/A copy of mandays chart of petitioner, Ex. RW1/B copy of muster roll, Ex. RW1/C copy of order of Hon'ble Administrative Tribunal, H.P., Ex. RW1/D1 to Ex. RW1/D12 copies of notices issued to petitioner and others, Ex. RW1/E1 to Ex. RW1/E-12 copies of mandays chart/seniority list of Umesh Kumar and others and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 18.11.2011 for determination:

1. Whether the disengagement of the petitioner w.e.f. December, 2004 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP.*
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . *OPR.*
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . . *OPR.*
4. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Unpressed

Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. At the outset, it would be pertinent to mention here that Hon'ble High Court of H.P. while deciding CWP No.10079 of 212-H had remanded the case to this court directing for

adjudication afresh on all issues and that the parties had undertaken to appear before this court on 8.4.2015 as is evident from the certified copy of order of Hon'ble High Court on record.

11. Stepping into witness box as PW1, petitioner has sworn his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein as maintained in the claim petition. In cross-examination he has denied that notice dated 29.11.2004 was given as per orders of Hon'ble Administrative Tribunal H.P. due non availability of work and funds. He has admitted that retrenchment notices were given but denied that petitioner had not completed 240 days of work in any of the years of employment and even prior to retrenchment as required under law. He has been specifically admitted to have worked with the respondent department in the month of January, 2005 but denied to have left the job of his own and that muster roll for the entire month of January, 2005 was issued in his name by the respondent. He has refuted the allegation that workmen whose name have been divulged by petitioner in the claim petition were senior to him and that he did not attend his duties regularly as he used to remain busy in agricultural pursuits. On the other hand, Shri D.S. Pathania, Executive Engineer stated on oath in cross-examination that Sanjay Kumar, Ganesh and others were junior to petitioner and these junior persons were serving under the respondent.

12. It is settled law that this court cannot travel beyond the terms of reference and therefore the question of providing fictional breaks if any to petitioner by respondent cannot go into by this court. It has come in the evidence that petitioner had been disengaged in January, 2005 whereas the reference from the appropriate government reveal that services of petitioner had been terminated w.e.f. December, 2004. The crux of the problem which falls for adjudication is that petitioner had worked till December, 2004 or if he also worked in the month of January, 2005 which is crucial point for determination. It has been contended by Ld. Dy. D.A. for state that if petitioner is held to have worked in the month of January, 2005 this court cannot give findings beyond the point of reference made by the appropriate government. On the contrary repudiating the arguments advanced by Ld. Dy. D.A. for the respondent, ld. counsel for petitioner has contended that as per Ex. RW1/B the copy of muster roll from 1.1.2005 to 31.1.2005, it could be concluded with certainty that petitioner had factually worked in the month of January, 2005. Be it stated here that petitioner **in his cross-examination has specifically admitted on oath that he had gone for work with the respondent in the month of January, 2005** which proved that petitioner remained employed with respondent in January, 2005 although for one single day. Ld. counsel for petitioner has also contended with vehemence that there is no reliable evidence on record showing that petitioner has factually worked for one day in the month of January, 2005 besides he had not received any payment for even a single day in the month of January, 2005. Ld. counsel has drawn my attention towards Ex. RW1/B muster roll no. 722 which although showed that petitioner had worked for one day but had not taken wages even for single day. It is contended that even total wages amount of all the five workmen including petitioner in Ex. RW1/B is shown to aggregating of Rs.780/- @ of Rs.195/- per workman per day but the muster roll does not show that amount of one day of petitioner was included in the muster roll. Another aspect highlighted by ld. counsel for petitioner remains that the muster roll shows that petitioner had worked for 4.1.2005 as attendance was marked on that day and mandays chart Ex. RW1/A also showed that petitioner to have worked only for one day. However, in replying para no.2, respondent has specifically alleged that petitioner had abandoned job w.e.f. 2.1.2005 which manifestly showed the falsity of stand taken by respondent but no question of this effect was asked by ld. counsel for petitioner to RW1 of the respondent qua petitioner having not served in the month of January, 2005. As such, even when respondent in its reply has specifically alleged that petitioner had abandoned the job on 2nd January, 2005 and at the same time his attendance is shown to have been marked for single day i.e. for 1.4.2005, it is not to be read in evidence in as much as that the petitioner had not asked even single question challenging exact date of abandonment by the petitioner. **That being so, more particularly when petitioner himself admits on oath to have worked in January, 2005** it would be unsafe to hold that petitioner had not worked in the month of January, 2005. Accordingly, it is

held that petitioner had actually worked in the month of January, 2005 as well whereas the point of reference from the appropriate government relates to termination of petitioner in December, 2004.

13. In so far as violation of Section 25-F of Industrial Disputes Act is concerned, only fact to be proved by petitioner is that he had rendered 240 days in service preceding his date of termination. There is no reliable evidence on record establishing that petitioner had factually worked for 240 days in any of the years preceding his termination. A bare glance on mandays chart Ex. RW1/A showed that petitioner had worked for 140, 156, 185, 184, 160, 186, 181.5, 186.5, 223 and 28 days in the years from 1995 to 2004 respectively as reflected in mandays chart Ex. RW1/A. As noted above the evidence of fictional breaks given to petitioner by respondent cannot be gone into by this court in view of reference received from appropriate government, it can be safely concluded that petitioner was not entitled to protection envisaged under Section 25-F of the Industrial Disputes Act having failed to prove to have worked for more than 240 days in any of the years reflected in mandays chart, provisions of Section 25-F of the Industrial Disputes Act cannot be invoked. Accordingly, respondent cannot be stated to have violated provisions of Section 25-F of the Industrial Disputes Act referred to above.

14. In so far as violation of principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act is concerned, suffice would be to state here that petitioner has to establish that at the time of his retrenchment his juniors remained employed or continued to remain in service meaning thereby that while short listing or retrenching workmen, no fairness was maintained by respondent department as juniors to petitioner were allowed to continue service and the petitioner was removed from service by way of retrenchment. Reliance is placed on the cross-examination of RW1 the only witness the then Executive Engineer who admitted that workmen junior to petitioner were still employed. He although stated of his own that petitioner abandoned job of his own but admitted that Sanjay Kumar s/o Bali Ram and Ganesh Kumar s/o Brij Lal were junior to him. He has further admitted that when petitioner left the job, no notice was given although a notice in November, 2004 was issued which related to retrenchment of petitioner on account of non availability of funds and the work. Since the respondent in cross-examination has admitted that junior workmen to that of petitioner have been retained, it can be safely be held that respondent had violated the provisions of Section 25-G of the Industrial Disputes Act.

15. It is also settled law that for the applicability of provisions of Section 25-G it was not necessary that petitioner should have worked for 240 days in a year as has been held by **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Mandays chart Exts. RW1/E1, E2, E3, E4, E5, E6, E7, E8, E9, E10 and E11 of Umesh Kumar s/o Bal Krishan, Chaman Lal s/o Bhagi, Bikram s/o Chand, Beli s/o Rafal, Tilak s/o Rikhnu, Tilak Raj s/o Teju Ram, Ramesh Kumar s/o Vias Dev, Bishan Dass s/o Machloo, Ganesh Kumar s/o Brij Lal, Jarmo s/o Nokal and Sanjay Kumar s/o Baldev Ram had joined earlier to petitioner in **November, 1994 except Ganesh Kumar s/o Brij Lal who joined in December, 1994 and Sanjay Kumar s/o Shri Baldev Ram who joined in March, 1995**. As such, Ganesh Kumar who was admittedly junior to petitioner continued to be retained in service and the petitioner was disengaged. In such like situation, it may not be erroneous to conclude that respondent had violated the principle of 'Last come First go' and thus violated of provisions of Section 25-G of the Industrial Disputes Act is manifest from evidence on record.

16. In so far as the plea of petitioner that the provisions of Section 25-H of the Industrial Disputes Act had not been followed by respondent it would be relevant to mention here that prior to retrenchment notices Exts. RW1/D1 to Ex. RW1/D12 had been issued to several workmen. Ex. RW1/D12 was issued to petitioner but while terminating his services no notice was given as has been specifically admitted by respondent in the witness box. RW1 D.S. Pathania, the then Executive Engineer and respondent in this case has admitted that when petitioner abandoned the job, he was not issued any notice. As per plea of respondent, petitioner had abandoned the job in

January, 2005. There is no iota of evidence on record showing that any notice qua unauthorized absence or charge sheet for non-attendance was issued as absence from duty is a serious misconduct. Having not done so by the respondent, it cannot be held that petitioner had abandoned the work. It remains the case of respondent that due to non availability of funds and budget, notices Exts. RW1/D1 to D12 had been issued but there is no iota of evidence on record which would show that respondent had ever issued notice to petitioner while reengaging or reemploying the workers subsequently. As per Exts. RW1/E 1 to E11, Sanjay Kumar was engaged in the year 1995 in the month of March who had been regularized as per the record but while engaging said Sanjay Kumar in the year 1995 or Ganesh Kumar in December, 1994 as reflected in Exts. RW1/E9 and E11, no notice was ever issued by respondent to petitioner calling upon him to join duties on account of availability of vacancy and funds. As such, mandate even under Section 25-H also was not followed while reengaging other workmen as noted above despite retrenchment of petitioner in the month of January, 2005. Accordingly, it is held that there was violation of the provisions of Section 25-H of the Industrial Disputes Act. In view of foregoing, it is held that respondent had not violated provisions of Section 25-F of the Act and violated provisions of Section 25-G and 25-H of Act while disengaging/retrenching petitioner. With regard to relief petitioner cannot be granted any relief in view of findings herein given below for issues no.2. Issue no. 1 is decided accordingly.

ISSUE NO. 2

17. Ld. Dy. D.A. representing respondent department has contended with vehemence that this court cannot travel beyond the term of reference. It is also pointed out that the question of fictional breaks if any given to the petitioner cannot be gone into by this court in view of no reference from appropriate government qua fictional breaks. On the other hand, ld. counsel for petitioner has contended that petitioner has proved his claim which is not maintainable. As per the reference received from the appropriate government on record, petitioner is stated to have been terminated in December, 2004 whereas the petitioner himself admitted on oath in cross-examination that he had served the respondent department in January, 2005 which can also be noticed from Ex. RW1/A. Certainly it not the case of petitioner that mandays chart produced by respondent was incorrect. Ex. RW1/B of muster roll from 1.1.2005 to 31.1.2005 also unfolds the fact that petitioner had served the respondent department in the month of January, 2005. Since petitioner worked under the respondent in the month of January, 2005 therefore termination of his services in December, 2004 did not arise. Accordingly, the only irresistible inference that may be drawn is that services of petitioner were not dispensed with by respondent in the month of January, 2005 rather claim put forth by petitioner cannot be stated to be maintainable due to which he is not entitled to any relief due to findings on the foregoing paras of issue no.1 wherein I have held that petitioner had failed to establish that he had worked for 240 days attracting the provisions of Section 25-F of the Industrial Disputes Act yet there is reliable evidence to show that the provisions of Sections 25-G and 25-H of the Industrial Disputes Act were not followed but as I have discussed in findings on foregoing paras that claim petition was filed by petitioner is not maintainable which would certainly eclipse the claim of petitioner on the ground of maintainability. Accordingly, this court is left with no option but to hold that present claim petition being not maintainable is liable to be dismissed. Accordingly, it is held that claim petition is not maintainable. Issue in had is answered in negative in favour of respondent and against petitioner.

ISSUE NO. 3

18. Ld. Dy. D. A. representing respondent department did not press this issue so raised in its reply by respondent. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC &**

another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

19. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and in favour of petitioner.

RELIEF

20. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of June, 2015.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 189/2015

Smt. Nardu Devi w/o Shri Puran Chand, r/o V.P.O. Khadihar, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . . . *Respondent.*

30-06-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Notice sent to the petitioner has not been received back served or unserved. Be issued again for 25-08-2015 at Mandi.

Sd/-
K. K. SHARMA,
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

At this stage, memo of appearance has been filed by Sh. N.L. Kaundal, authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has made a statement that he does not want to proceed with this present reference and has prayed its dismissal. Accordingly, authorised representative for the petitioner in his statement on record has not pressed in this reference besides prayed for its dismissal. Present reference received is, thus, dismissed as withdrawn.

Ordered accordingly. The parties to bear their own costs.

The reference is answered in the aforesaid terms.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
30.06.2015

Sd/-
K. K. SHARMA,
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. 352/ 2014

Sh. Subhash Chand s/o Shri Kanhiya Ram, r/o V.P.O. Mohanghatti, Tehsil Joginder Nagar,
District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
...Respondent.

30-06-2015 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

30-06-2015 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.05 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
30-06-2015

Sd/-
K. K. SHARMA,
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 312/ 2014

Sh. Krishan Kant s/o Shri Om Parkash, r/o House No. 217/2, Purani Mandi, Mandi Town,
District Mandi, H.P. ...Petitioner.

Versus

The Chairman/Principal, M.G. Polytechnic, Badhoo, District Mandi, H.P. ...Respondent.

30-06-2015 Present : None.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

30-06-2015 Present : None.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.15 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
30-06-2015

Sd/
K. K. SHARMA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref : No. 228/ 2014

Sh. Ramesh Chand s/o Shri Arjun Singh, r/o Village Janed, P.O. Marathu, Tehsil & District
Mandi, H.P. ...Petitioner.

Versus

The Employer/Managing Director, M/s Shivansh Motors Private Limited Gutkar, Tehsil & District Mandi, H.P. *...Respondent.*

30-06-2015 Present : None for the petitioner.

Sh. D.S. Katoch, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.50 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

30-06-2015 Present : None for the petitioner.

Sh. D.S. Katoch, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
30-06-2015

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref: No. 225/ 2014

Sh. Dharam Pratap s/o Shri Daya Ram, r/o Village Gutkar, P.O. Baryara, Tehsil Sadar, District Mandi, H.P. *...Petitioner.*

Versus

The Employer/Managing Director, M/s Shivansh Motors Private Limited Gutkar, Tehsil & District Mandi, H.P. *...Respondent.*

30-06-2015 Present : None for the petitioner.

Sh. D.S. Katoch, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.45 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

30-06-2015 Present : None for the petitioner.

Sh. D.S. Katoch, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

30-06-2015

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. 226/ 2014

Sh. Pawan Kumar s/o Shri Kahan Singh, r/o Village Kathwar, P.O. Baryara, Tehsil Sadar, Distt. Mandi, H.P. *...Petitioner.*

Versus

The Employer/Managing Director, M/s Shivansh Motors Private Limited Gutkar, Tehsil & District Mandi, H.P. ...Respondent.

30-06-2015 Present : None for the petitioner.
Sh. D.S. Katoch, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.50 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

30-06-2015 Present : None for the petitioner.

Sh. D.S. Katoch, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.45 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

30-06-2015

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref: No. : 146/2013

Shri Sher Singh s/o Shri Muni Ram, r/o Village Sajala, P.O. Badhoo, Tehsil Chachyot, District Mandi, H.P. ...Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P. ...Respondent.

30-06-2015 Present : Sh. S.R. Badhan, adv. csl. for the petitioner.

None for the respondent.

Summons sent for service of parties have not been received back served or unserved. Heard. Statement of ld. csl. for the petitioner for not pressing of reference is recorded separately and placed on file.

2. In view of statement made by ld. csl. for the petitioner, the claim of the petitioner is disposed of as withdrawn.

3. Ordered accordingly. The parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

6. The file, after completion be consigned to the records.

Announced:
30.06.2015

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 146/2013

Shri Sher Singh s/o Shri Muni Ram, r/o Village Sajala, P.O. Badhoo, Tehsil Chachyot,
District Mandi, H.P. ...Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent.

30-06-2015 Present : Sh. S.R. Badhan, adv. csl. for the petitioner.

None for the respondent.

Summons sent for service of parties have not been received back served or unserved. Heard. Statement of ld. csl. for the petitioner for not pressing of reference is recorded separately and placed on file.

2. In view of statement made by ld. csl. for the petitioner, the claim of the petitioner is disposed of as withdrawn.
3. Ordered accordingly. The parties to bear their own costs.
4. The reference is answered in the aforesaid terms.
5. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
6. The file, after completion be consigned to the records.

Announced:
30.06.2015

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMPT AT MANDI)**

Ref. No. : 60/2013
Date of Institution : 17.7.2013
Date of decision : 30.06.2015

Shri Om Prakash s/o Shri Bali Ram, r/o Village Gharehali, P.O. Balag, Sub Tehsil Nihri,
Distt. Mandi, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Sundar Nagar, District Mandi, H.P. Range
Officer, Forest Range Jhungi, Division Sundar Nagar, Distt. Mandi, H.P. ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.S. Sankhyan, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Om Prakash S/O Sh. Bali Ram, R/O Village-Gharehali, P.O. Balag, Sub Tehsil Nihri, Distt. Mandi, H.P. by The Divisional Forest Officer, Forest Division, Sundar Nagar, Distt. Mandi, H.P. & Range Officer, Forest Range Jhungi, Division Sundar Nagar, Distt. Mandi, H.P. during July, 1999 without complying

with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Consequent upon receipt of reference from appropriate government, notices were sent to the parties in pursuance to which claimant/petitioner appeared and has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as a beldar with the respondents w.e.f. 29th September, 1998 who remained employed till 17.2.2000 who had completed 240 days prior to termination of his services. The grievance of petitioner remains that services of petitioner had been wrongly, arbitrarily and unconstitutionally terminated/retrrenched vide oral order of Range Officer Forest Range Jhungi without assigning any reason or giving him any opportunity of being heard. It is further claimed that termination of services of petitioner were completely illegal wrong malafide and without following needful procedure envisaged under Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act' for short). It is alleged that Range Officer Forest Range Jhungi had appointed/engaged namely Desh Raj s/o Prem Lal, Ramdayal s/o Karam Singh, Parkash Chand s/o Devi Singh who were junior to petitioner and that workmen namely Hem Raj s/o Narad, Radha Krishan s/o Briya Ram and Inder Singh s/o Mast Ram were appointed at the time of appointment of petitioner but services of these persons have been regularized. Aggrieved with the aforesaid oral order, petitioner had approached the Hon'ble Administrative Tribunal, Shimla, filed petition under Section 19 of H.P. Administrative Tribunal Act but vide order dated 15.12.2004, said petition was dismissed holding that Hon'ble Administrative Tribunal had no jurisdiction on the basis of ratio laid down by our own Hon'ble High Court in CWP No.371/999. It is alleged that petitioner time to time had approached the respondents for reengagement but respondents did not pay any heed to his requests. Lastly, petitioner raised demand notice and initiated conciliation proceedings on 12.3.2009 notifying therein that respondents were still engaging juniors ignoring appointment of petitioner and that work was still available with them. It is alleged that respondents did not engage petitioner on account of their malafide intention. Accordingly, petitioner has prayed for setting aside/quashing the oral order dated 17.2.2000 with further directions to the respondents to engage petitioner as regular worker with all consequential benefits.

4. Respondents filed joint reply, contested the claim petition inter- alia taken preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits stated that petitioner was initially engaged as casual labourer to carryout the seasonal forestry works on 21.12.1998 subject to availability of work and funds but petitioner worked intermittently upto 20th July, 1999 who had not completed 240 days of work in any calendar year ever since his initial engagement as was evident from the mandays chart. It is specifically stipulated that petitioner had himself abandoned the job of his own convenience in the month of July/August, 1999. It has been emphatically denied that the services of petitioner had been terminated or retrrenched by the respondents instead the petitioner had himself left the job at his own sweet will. It is further clarified that workmen namely Desh Raj, Ramdayal and Parkash Chand were engaged in the year 1999 as casual labourers with the respondents department who had worked continuously intermittently as can be gathered from the mandays chart. It is admitted that Hem Raj, Radha Krishan and Inder Singh were initially engaged in May, 1998 who had completed 240 days in each calendar year which was only criteria for regularization of their services. It is contended that mandays chart is the only criteria to determine total length of service and even on the basis of seniority of daily waged workers, respondents could not be stated to have violated the principle of 'Last come First go'. Accordingly, denying cause of action as projected by petitioner in the claim petition, the same was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, tendered/proved his affidavit Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by petitioner, the respondents had examined Sh. Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B is the mandays chart of petitioner, Exts. RW1/C and D are the mandays chart of other mazdoors and Ex. RW1/E is the seniority list of Suket Forest Division as on 30.11.2011 and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my Id. predecessor on 25.2.2014 for determination:

Whether the termination of the services of the petitioner by the respondents during the month of July, 1999 is/was illegal and unjustified as alleged? ...*OPP*.

Whether the petition is not maintainable in the present form? ...*OPR*.

Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ...*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Factum of petitioner having been appointed as daily waged beldar by the respondent on 21.12.1998 is not in dispute. It is also not in dispute that petitioner had worked with the respondents upto 20th February, 2000. The petitioner has asserted that he had completed 240 days which can be appreciated in better way by referring to mandays chart on record. Ex. RW1/B is a copy of mandays chart reflecting the petitioner to have remained employed on 21.12.1998 till the year 1999. This document further shows that petitioner had worked in the months of January, February, March, April, May, June and July aggregating 167 days in the said years. It is admitted case of the parties that petitioner was no more working after 20th July, 1999 although both the parties have assigned different causes for not working by the petitioner. A bare glance at the mandays chart in no manner established that petitioner had worked for 240 days as he can be stated to have worked for 167 and 11 days and that he worked, in all for 178 days. Since petitioner has failed to establish that he had completed 240 days of work in a calendar year, the only inference that can be drawn is that provisions of Section 25-F of the Industrial Disputes Act would not be attracted in this case.

11. In so far as plea of petitioner qua respondents having not observed the principle of 'Last come First go' envisaged under Section 25-G of the Act is concerned, suffice would be to state here that mandays chart Ex. RW1/C concerning Desh Raj, Ram Dayal and Parkash Chand established that all three employees had joined in the year 1999 as they were not working earlier in 1998 when petitioner was employed. All the three workers above named joined later in service to that of petitioner were still continuing as per the reply of the respondents as well as evidence on record. Ex. RW1/D is mandays chart concerning Hem Raj, Radha Krishan and Inder Singh showing that they had been engaged on 1.5.1998 and 15.4.1998 respectively. Since all these workmen as mentioned in Exts. RW1/C and D is concerned, it is amply clear from the records that almost all the workers had worked for more than 240 days and thus it could not be stated that no work or funds as stated above was available rather such this plea seems to have been taken by the respondents so as to defeat the claim of petitioner.

12. Stepping into witness box as PW1, petitioner in unequivocal terms maintained that Ramdayal, Parkash Chand and Desh Raj who were admittedly junior to him had been allowed to continue in job whereas the services of petitioner had been dispensed with by verbal order. At the same time, petitioner in the cross-examination has reiterated that Desh Raj and Ram Dayal were junior to him as petitioner himself was appointed in 1998. He has further denied that he used to leave work of his own rather worked in continuity. At this stage, it would be relevant to mention that respondents on the one hand asserted that the work of forest department was seasonal in nature and unfortunately employment could not be given to petitioner for all 365 days in the year and on the other hand workers abovenamed had worked for more than 240 days which perpetually belies the stand of respondent rather plea of seasonal work could have been established if the appropriate government would have notified forestry, as seasonal work which is not the case of respondents.

13. It is settled law that for invoking the provisions of Section 25-G it is not necessary for the petitioner to establish that he had worked for 240 days even if the petitioner had not completed 240 days in any calendar year for invocation of the Section 25-G of the Act which was to be reckoned from 1998 itself. In **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**, the Hon'ble Apex Court has held that it was not necessary that the workman ought to have worked atleast for 240 days to get the benefit of Section 25-G of the Act. Thus, the aforesaid action of the respondents in retrenching petitioner and allowing junior to continue manifestly violates provisions of Section 25-G of the Act and to this extent, disengagement of petitioner was against the mandatory principle of 'Last come First go'. It remains the case of the respondents that petitioner worked intermittently but did not work regularly and left the job of his own sweet will but there is no corresponding evidence on record which would show that respondents had issued any notice or charge sheet for unauthorized absence of the petitioner. It has rightly been contended that abandonment is question of fact which has to be determined in the light of surrounding circumstances as has been held in **State of H.P. vs. Bhatag Ram & Anr.** reported in **2007 LHLJ 903**. In absence of any reliable evidence to prove the abandonment, this court is left with no option but to hold that petitioner had not abandoned the job instead Range Officer Jhungi had verbally terminated services of petitioner by an order dated 17.2.2000. Since there is ample evidence on record to show that juniors of petitioner namely Desh Raj, Ram Dayal were retained in service and while carrying out retrenchment process, petitioner was definitely senior to both these workmen and thus respondents had violated the provisions of Section 25-G of the Act. Since termination of services of the petitioner by respondents i.e. Divisional Forest Officer Sundernagar and Range Officer Jhungi are illegal and unjustified, the petitioner would be entitled for past service benefits and seniority however he would not be entitled for back wages as claimed in his statement of claim. Be it noticed that petitioner has not whispered even a single word on oath that he remained unemployed during the period he was retrenched from service by the respondents. Thus, in absence of any such plea having not been raised by the petitioner, it would be unsafe to award any back

wages since nothing has been claimed by petitioner on this score. In view of foregoing paras, issue no.1 is answered in part in favour of the petitioner and against the respondents.

ISSUE NO. 2

14. Ld. Dy. D. A. representing respondent has argued that the claim petition is not maintainable. There is no specific allegation in the reply in what manner the claim petition was not maintainable but petitioner having been illegally retrenched had rightly approached Labour-cum-Conciliation Officer and thereafter before the Labour Commissioner and lastly when no relief was given by Labour Commissioner petitioner filed CWP No.4424/2012. Since the services of petitioner were illegally terminated he had no other remedy available under the law except filing claim petition before the Labour Court in pursuance to order qua reference by Labour Commissioner. As such, I see no force in the arguments of Ld. Dy. D.A. and that petitioner could redress his grievance by filing claim petition as stated above. Issue in hand is answered in negative and in favour of petitioner and against the respondents.

ISSUE NO. 3

15. It has been contended with vehemence by Ld. Dy. D.A. representing respondents that there is unexplained delay in filing the case before the Labour Court. He has pointed out from claimant/petitioner was retrenched from service on 17.2.2000 whereas the present statement of claim has been filed in the year 2013. On the other hand, ld. Authorized Representative/counsel for the claimant/petitioner had contended that delay does not disentitle petitioner from seeking relief and has relied upon in **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In **CWP No. 95 of 2000** titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches. Once the dispute has been referred by the State Government the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon on merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In the case in hand, a dispute was raised by petitioner when his services were terminated in pursuance to which petitioner raised demand notice on 12.3.2009 and thereafter conciliation had failed in pursuance to which petitioner had approached the Hon'ble Administrative Tribunal where the case remained pending for seven months and was dismissed on the ground of jurisdiction and thereafter the petitioner approached the Hon'ble High Court by filing CWP No.4424/2012 which was decided on 10.4.2013 in pursuance to which reference was made by Labour Commissioner on 5.7.2013. Thus, petitioner has satisfactorily explained the circumstances in which the delay took place and as such delay having been reasonably explained by petitioner would not eclipse the right of petitioner from claiming relief by way of reengagement, past service benefits, seniority etc. Accordingly, it is held that petition is not hit by the vice of delay and laches. Issue in hand is decided in favour of petitioner and against the respondents.

RELIEF:

16. As a sequel to my findings on the issues above, the reference petition is allowed in part and the termination of the services of the petitioner is set aside and the respondents are hereby directed to reinstate the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The respondents are also further directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. The parties, however, shall bear their own costs.

17. The reference is answered accordingly.

18. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K. K. SHARMA PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 61/2013
Date of Institution : 17.7.2013
Date of decision : 30.6.2015

Shri Raj Kumar s/o Shri Hira Lal, r/o Village Dhar, P.O. Balag, Sub Tehsil Nihri, Distt. Mandi, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Sundar Nagar, Distt. Mandi, H.P. & Range Officer, Forest Range Jhungi, Division Sundar Nagar, Distt. Mandi, H.P. ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.S. Sankhyan, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Raj Kumar S/O Sh. Hira Lal R/O Dhar, Post Office-Balag, Sub Tehsil Nihri, Distt. Mandi, H.P. by The Divisional Forest Officer, Forest

Division, Sundar Nagar, Distt. Mandi, H.P. & Range Officer, Forest Range Jhungi, Division Sundar Nagar, Distt. Mandi, H.P. during the year, 1999 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Brief facts as set up in the statement of claim reveal that petitioner was initially engaged as beldar with the respondents w.e.f. 29.9.1998 where he remained upto 17.2.2000 completing 240 days of his continuous service within calendar years. The claim of petitioner further remains that on 17.2.2000, the service of the petitioner was illegally terminated by oral order of the respondent No.4 without assigning any reason whatsoever and without giving an opportunity of being heard to the petitioner in violation of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred that the respondent No.4 had appointed/engaged many persons junior to the petitioner namely Desh Raj, Ramdayal and Parkash Chand and the persons namely Hem Raj, Inder Singh and Radha Krishan, who were appointed with the petitioner have also been regularized. It is also averred that the petitioner feeling aggrieved by his termination approached the Hon'ble Administrative Tribunal and filed petition under section 19 of H.P. Administrative Tribunal Act, which was returned back vide order dated 15.12.2004 holding that the Tribunal had no jurisdiction in the matter and thereafter, the petitioner time and again approached the respondents to re-engage him, but of no avail and on 16.2.2009, the petitioner was called to be reengaged by the respondent No.4, but neither any muster roll had been issued nor his attendance was entered and the salary had also not been paid to him. It is also averred that on 12.3.2009, the petitioner initiated conciliation proceedings through demand notice with the prayer that the respondent be called upon and conciliation proceedings be initiated for issuance of muster roll and recording attendance of the petitioner and to count/assign the previous period w.e.f. 17.2.2000 to 16.2.2009 as continued period for the purpose of seniority but the same did not yield any result.

3. The petitioner thus prays that his oral termination order dated 17.2.2000 be set aside and the respondents be directed to engage the petitioner as regular worker along-with consequential benefits.

4. The claim so filed by the petitioner was contested by the respondents by filing a reply inter alia taken preliminary objections qua maintainability and that the claim of the petitioner being bad on account of delay and laches. On merits, it is contended that the petitioner was initially engaged as a casual labourer to carryout the seasonal forestry works on 21.9.1998 as per availability of works and funds and worked intermittently upto 20.8.1999 and that he had not completed 240 days in any calendar year since his initial engagement and he had finally abandoned the job at his own sweet will and convenience in the month of July/August, 1999. It is however denied that the services of the petitioner had been terminated by the respondents. It is further averred that the workmen namely Desh Raj, Ramdayal and Parkash Chand, who were engaged during October, 1999 as casual labourers were still working continuously as intermittent casual labourers with the respondents upto now and Hem Raj, Inder Singh and Radha Krishan, who were initially engaged in the month of April and May, 1998 and completed 240 days in each calendar year which is the only criteria for regularization of daily wagers and they have been regularized in the month of September, 2007. Thus, violation of the provisions of Sections 25-F and 25-G of the Act is specifically denied. It is further averred that the petitioner left the job of his own sweet will and convenience and never reported back for duty. It is denied that the petitioner was re-engaged during the year 2009 and averred that the question of paying him wages for the year 2009 did not arise although admitted that the conciliation proceedings were initiated on the demand notice of the petitioner but maintained that the petitioner had raised the dispute for the first time on 12.3.2009 after more than nine years of his abandoning the job and as such he was not entitled to any relief on account of delay and laches as claimed by him.

5. In a rejoinder filed by the petitioner, the averments as contained in the statement of claim were reiterated after refuting those of the reply contrary to the statement of claim.

6. On 25.2.2014, the following issues were framed by my ld. predecessor which are as under:

1. Whether the termination of the services of the petitioner by the respondent during the year 1999 is/was illegal and unjustified as alleged? ...*OPP*.
2. Whether the petition is not maintainable in the present form? ...*OPR*.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ...*OPR*.
4. Relief.

6. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

7. From the contentions raised, following issues were framed by my ld. predecessor on 25.2.2014 which are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

8. It is admitted case of the parties that the services of the petitioner were engaged on 29.9.1998 and he worked intermittently till 17.2.2000. The respondents have not placed/exhibited on record any document evidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner is that he was engaged as beldar by the respondent on 29.9.1998 and remained as such upto 17.2.2000 on which date his services were illegally terminated and he had completed 240 days in his continuous service within calendar year. On the other hand, it is the plea of the respondents that the petitioner was engaged as casual labourer on 21.9.1998 and he had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of July/August 1999. However, there is nothing on record to establish that the petitioner has completed 240 days in the 12 calendar months preceding his termination except the bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondents establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he has worked only for 11 days during the year 1998 and 157 days during the year 1999. In view of this, the plea of the petitioner that he has completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

9. It is also the plea of the petitioner that the services of Hem Raj, Inder Singh and Radha Krishan, who were appointed with him, have since been regularized which plea of the petitioner has been denied by the respondents. On the other hand, it is the plea of the respondents that Hem Raj, Inder Singh and Radha Krishan were initially engaged in the month of April and May 1998 and as such they are not junior to the petitioner. However, it is not disputed by the respondents that the services of Hem Raj, Inder Singh and Radha Krishan have been regularized. On the other hand, it is the plea of the respondents that their services have been regularized as they have completed 240 days in each calendar year which is only the criteria for regularization of daily wagers. The mandays chart of Hem Singh, Radha Krishan and Inder Singh Ex. RW1/D and seniority list Ex. RW1/E shows that Hem Singh was initially engaged on 01.5.1998 whereas Radha Krishan was engaged on 15.4.1998 and Inder Singh was also engaged on 15.4.1998, whereas it is the case of the petitioner himself that he was engaged on 29.9.1998 and as such they were engaged before the petitioner and all of them have also completed 240 days in the block of 12 calendar months and their services have rightly been regularized.

10. The version of the petitioner is that his services were illegally terminated by the respondents by verbal order on 17.2.2000 which fact the respondents have denied and it is the plea of the respondents that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondents have examined Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sundar Nagar as RW1 who has deposed that the petitioner has himself abandoned the job in the month of July/August 1999 however, there is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the job. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of RW-1, one of the respondents, there is nothing to show that the petitioner had in fact abandoned the job. It is well settled position of law that the abandonment has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).

11. Absence from duty is a serious misconduct and admittedly no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. In view of this, bald statement of RW-1 cannot be relied upon and on the basis of uncorroborated statement of RW-1, the plea of abandonment put forth by the respondents cannot be held to have been established and thus it cannot be held that the petitioner had abandoned the job of his own free will and volition.

12. It is the plea of the petitioner that the persons junior to him namely Desh Raj, Ramdayal and Parkash Chand have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondents that Desh Raj, Ramdayal and Parkash Chand, who were engaged during October, 1999 as casual labourers with the respondents are still continuously working as intermittent casual labourers with the respondents department. This fact is also established on perusal of mandays chart Ex. RW1/C of Desh Raj, Ram Dayal and Parkash Chand. On perusal of Ex. RW1/C, it is established that Desh Raj, Ram Dayal and Parkash Chand were initially engaged during October, 1999 and thus they were junior to the petitioner, who was engaged during September, 1998 and they have been retained in service by the respondents and they are still continuously working with the respondents. Such fact has also been stated on oath by the petitioner while appearing as PW1 as well as by Shri Ajit Kumar Thakur (RW1). In his cross-examination, RW1 has specifically admitted that Desh Raj etc. were junior to the petitioner and they were still in service. In view of this, the respondents can be safely to have violated the provisions of Section 25-G of the Act which provision is mandatory in nature and non compliance of the said provision entitles petitioner for relief claimed.

13. Not only this, on perusal of seniority list of daily wagers Ex. RW1/E relied upon by the respondents themselves, it is clear that many persons have been engaged as daily labourers by the respondents even after termination of the services of the petitioner and the petitioner was not afforded an opportunity to offer himself for re-employment while engaging the persons after termination of the services of the petitioner which is violation of the provisions of Section 25-H of the Act, which is also mandatory in nature. It can thus safely be said that the respondents while disengaging the services of the petitioner has failed to abide by the mandatory provisions of Sections 25-G and 25-H of the Act.

14. It is by now well settled that for seeking the protection of Sections 25- G and 25-H of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116. In HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320, the respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

15. Thus, in view of such settled position of law even if the petitioner has not completed the requisite number of days in the 12 calendar months preceding his termination, the respondents were still bound to follow the principle of 'last come first go', which has not been done in the present case and even while engaging persons subsequent to February, 2000, the respondents should have afforded opportunity to the petitioner to offer himself for re-employment, which was also not done. The termination of the services of the petitioner is thus illegal being against the mandatory provisions of Sections 25-G and 25-H of the Act. Consequently, the termination of the services of the petitioner is liable to be set aside.

16. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. In view of this, the petitioner has failed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 33 years and it can be safely assumed that a young man like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held not entitled to the back wages.

17. Since the termination of the services of the petitioner by the respondents has been held to be illegal being in contravention of the provisions of Sections 25-G and 25-H of the Act, the petitioner is ordered to be reinstated forthwith and he is also entitled to seniority and continuity in service from the date of his illegal termination. In view of what has been stated above, this issue is decided in favour of the petitioner and against the respondents and is answered accordingly.

ISSUE NO. 2

18. In view of my findings on issue No.1, the claim petition as filed by the petitioner can be safely held to be maintainable. Hence, the issue in hand is decided against the respondent and is answered accordingly.

ISSUE NO. 3

19. It is the plea of the petitioner himself that his services were orally terminated by the respondents on 17.2.2000 and it is clear on the reference made to this Court that the petitioner has raised the dispute vide demand notice dated 12.3.2009. The termination in question was immediately challenged by the petitioner by filing Original Application bearing No. 1450 of 2000 on 13.4.2000 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, which application was rejected for want of jurisdiction on 15.12.2004. The petitioner raised the demand notice on 12.3.2009 on the basis of which conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi, Distt. Mandi, H.P. However, the dispute could not be settled by the Labour Officer-cum-Conciliation Officer and he sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. who declined to make reference to Labour Court-cum-Industrial Tribunal on the ground of delay and laches. The petitioner thereafter filed a Writ Petition before the Hon'ble High Court of Himachal Pradesh bearing CWP No.4424 of 2012, which was allowed on 10.4.2013 and the Labour Commissioner, H.P. was directed to refer the matter to the Labour Court-CumIndustrial Tribunal for adjudication by holding that delay in question has occurred due to the pendency of Original Application before the erstwhile Himachal Pradesh Administrative Tribunal for almost four years and thereafter, the procedure as per the Industrial Disputes Act has taken long time and as such the claim cannot be held to have become stale and the delay of four years cannot be termed as inordinate delay.

20. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

21. No material has been placed on record by the respondents to hold that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013. The petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue is decided against the respondents and is answered accordingly.

RELIEF :

22. As a sequel to my findings on the issues above, the reference petition is allowed in part and the termination of the services of the petitioner is set aside and the respondents are directed to reinstate the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The respondents are also further directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time.

23. The reference is answered accordingly.

24. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 49/2013
Date of Institution : 25.04.2013
Date of decision : 30.06.2015

Shri Ram Lal s/o Shri Beli Ram, r/o Village Kaunsha, P.O. Deohari, Sub Tehsil Sainj, Distt. Kullu, H.P. ...Petitioner.

Versus

The SDO (Civil) Kullu, Distt. Kullu, H.P.

The Additional District Magistrate Kullu, H.P.Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. L.B. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ram Lal S/O Sh. Beli Ram, Village Kaunsha, P.O. Deohari, Sub Tehsil Sainj, Distt. Kullu, H.P. by i) The SDO (Civil) Kullu, Distt. Kullu,

H.P. ii) The Additional District Magistrate Kullu w.e.f. 15.7.2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer”.

2. The claim of the applicant (hereinafter referred to as petitioner) remains that he was appointed as computer operator by respondent no.1 on contract basis w.e.f. 1.1.2009 to 31.12.2009 on the monthly wages of ₹4000/- per month under respondent no. 2 where he joined on 1st January, 2009 and worked upto 17.12.2009. The petitioner was thereafter transferred with the respondent no.4 where he was worked for three months and after that he was transferred with respondent no. 3 and he worked as computer operator/backlog data operator upto 14.7.2011. The grievance of the petitioner remains that his services had been terminated by a verbal order without affording any opportunity of being heard despite the fact petitioner had completed 240 days in each calendar year without any break and thus termination of petitioner vide oral order was wrong, illegal and void ab-initio and no binding upon the rights of petitioner. It is alleged that when petitioner was working with respondent nos. 3 and 4 at Kullu at that time, Nirmla and Diksha were also working who were still working and the petitioner was removed from service without any basis despite the fact that petitioner was doing his work diligently. The petitioner further claimed that ₹4000/- was paid as honorarium/salary but from November, 2010 to July, 2011, no salary was paid to him and thereafter petitioner approached Labour Officer whereupon respondent no.4 had issued letter to release salary subject to the condition that complaint filed by claimant/petitioner before the Labour Officer, Kullu would be withdrawn by petitioner as petitioner alleges to have requested respondents no.1, 3 and 4 for his reengagement and releasing salary but his request was not allowed. It is further claimed that other similarly situated persons are also working under E-governance scheme in Himachal Pradesh and it was only the petitioner whose services had been terminated. Accordingly, while filing the claim petition under Section 10 of the Act, petitioner prays for his reengagement with respondents in the same capacity only as he was working, restoring his seniority and back wages from July, 2011 till the date of decision of reference petition and or prayed any other relief the petitioner is entitled to from the respondents.

3. Respondents resisted the claim petition, filed reply inter-alia taken preliminary objections of maintainability, petitioner having not approached the court with clean hands. On merits claimed that E-governance Society was a Society registered under the Societies Registration Act and functioned for providing egovernance services to the citizens. It is claimed that society has aim of giving service to the people and not to provide regular employment particularly in view of the fact that society had limited resources which could engage people on contract basis only. On merits, admitted that appointment of petitioner as computer operator on contract basis w.e.f. 1.1.2009 to 31.10.2010 and thereafter contract was not signed with the petitioner as his services were no longer required but that petitioner was rendering his services beyond the contract period and competent authority has decided to release the emoluments of petitioner upto 14.7.2011. It has been emphatically denied that Smt. Nirmla and Smt. Diksha were still working as data entry operator whose services have also been discontinued after expiry of their contracts. It is specifically maintained that there was no regular employees working with the society and that the office bearers of the society were the government officials who work in ex-officio capacity without taking any salary from the society. It is asserted that the resources of society are limited and engagement of contract workers depends upon requirement of society besides income and resources of society. It is further claimed that the services of petitioner as per the terms and conditions of agreement signed between the parties. It is also asserted that the basic principle governing contract is stated to be not perpetuity and that petitioner cannot claim employment when the employing agency does not need the services of the employees. Accordingly, it is alleged that petitioner had no locus standi to claim his rights as this would be governed by contract and conditions of contract and thus claim petition was sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is asserted that petitioner worked for the respondents and there was sufficient work available and therefore oral termination by the respondent is wrong and illegal. It is also contended that from November 2010 to July, 2011, no salary had been paid to petitioner. Accordingly, reiterating his stand as maintained in the claim petition, the same has been prayed to allow in the interest of justice.

5. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, appointment letter dated 31.12.2008 which is Ex. PW1/C, Ex. PW1/D is the copy of letter dated 11.2.2011 regarding engagement of IT coordinator and closed the evidence. On the other hand, respondents has examined Dr. Suresh Jaswal the then SDO (Civil), Kullu who sworn in affidavit which is Ex. RW1/A tendered/proved Exts. RW1/B1 to RW1/B3 and closed the evidence.

6. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

7. From the contentions raised, following issues were framed by my ld. predecessor on 11.12.2013 which are as under:

Whether the termination of the services of the petitioner by the respondents w.e.f. 15.7.2011 is illegal and unjustified as alleged? ...*OPP.*

Whether the claim petition is not maintainable in the present form? ...*OPR.*

Whether the petitioner has not come to the court with clean hands as alleged. If so, its effect? ...*OPR.*

Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : No

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. Admittedly, petitioner had been appointed as computer operator on contractual basis w.e.f. 1.1.2009 to 30.4.2010 on fixed monthly sum of ₹4000/- on the basis of agreement for employment of contract Ex. RA and subsequent agreement dated 1.5.2010 Ex. RB extending the period of employment afresh from 1.5.2010 to 31.10.2010 on similar amount of wages as before. It is also not in dispute that petitioner was disengaged/terminated from the services by verbal instructions/order dated 24.7.2011. The grievance of petitioner remains that he has been terminated

from service without following relevant provisions of the Industrial Disputes Act, 1947 and that petitioner had completed 240 days in each calendar year without any break and therefore termination by an oral order was perpetually illegal. It is not in dispute that petitioner had worked initially with respondent no. 2 from 1st January, 2009 and thereafter he was transferred to SDO (Civil) Kullu where he worked for only three months and that petitioner was thereafter transferred with respondent no.3 as per claim petition but certainly not made party in reference received from appropriate government. Even making respondents no. 3 and 4 as party has to be seen to the extent of reference in which SDO (Civil) Kullu and Additional District Magistrate, Kullu have made party and that Deputy Commissioner, Kullu and SDO (Civil) Banjar are not party as such no findings beyond the point of reference can be given by this court where petitioner worked till his termination of services. It would be therefore relevant to consider if petitioner being workman was entitled to statutory protection envisaged under the Industrial Disputes Act, 1947 particularly when he was admittedly appointed **purely on contract basis** vide appointment letter Ex. PW1/C dated 31.12.2008 in pursuance to which he had signed agreements Exts. RA and RB, for working only on contract basis.

10. Ld. counsel for petitioner has contended with vehemence that the petitioner had completed 240 days who could not be retrenched or terminated without complying with the mandate of Section 25-F of the Act. Ld. Dy. D.A., on the other hand had repudiating the arguments advanced by ld. counsel for petitioner has contended that the relationship between the parties has to be gathered in the light of documents/agreements entered into between the parties. In support of his contention, he has placed reliance upon Ex. RW1/B1 which is the same Ex. RA, Ex. RW1/B2 which is same as Ex. RB preceded by issuance of appointment letter Ex. PW1/C dated 31.12.2008 stipulating therein that appointment of petitioner on contract basis post of computer operator. Since executions of above referred agreements/contract of service are not disputed, it would be relevant to go through the contents/conditions of the agreement which would determine the actual relationship between the parties. Significantly, in Clause 7 of the agreement, it is specifically alleged that **employment was purely on contract basis and contractual agreement will in no way confer any right on the employee to seek any extension beyond the period of contract nor any claim for absorption in regular service.** As such, when it was categorically stipulated that employment of engaging petitioner as data entry operator was purely on contract basis who could not claim for absorption of any regular service, suffice would be to state here that petitioner was not a daily waged worker or temporary worker rather a person to work on contract.

11. Section 2 (oo) of Industrial Disputes Act defines “retrenchment”. The relevant provisions of the Act are produced below for reference:-

“[(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include voluntary retirement of the workman; or

retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;]”

12. A bare glance at the provisions referred to above would reveal that termination of the services of workman as a result of the non-renewal of the contract of employment between the

employer and workman concerned on its expiry or of such contract being terminated under stipulation in that behalf is excluded from the definition of retrenchment. It may be pertinent to mention here that retrenchment as defined under the Industrial Disputes Act means that termination by employer of the service of workman for any reason whatsoever, otherwise as a punishment inflicted by disciplinary action, but did not include termination as a result of non-renewal of contract. The plea of the respondent primarily remains that the services of petitioner were required for definite purpose with the objects of society which was being run purely for services for citizen and that all the members of e-governance society were the ex-officio members who worked without any payment of remuneration. Thus, when respondent had not extended the period after 31.12.2008, automatically the agreement of employment came to end between the parties. Although, respondent in their reply have maintained that when they realized that petitioner was working even after the date of expiry of terms of contract employment they had decided to release the salary beyond the period of contract and there plea corresponds with letter dated 17.10.2011 Ex. P1 issued by SDO (Civil)-cum-Member Secretary, e-Governance Society, Kullu. It can be noticed from the contents of Ex. P1 that the amount of salary w.e.f. 1.11.2010 to 14.7.2011 would be released only if the petitioner withdrew his application filed before the Labour Officer-cum-Conciliation Officer, Kullu regarding release of salary. This would further reveal that the amount of salary for the period in which petitioner was not appointed or his contract was not extended was merely to validate the action of respondents in releasing him the same amount of salary which he was drawing which could not be in any manner construed to mean that petitioner was working on either regular basis or temporary basis but that amount was released due to some bonafide mistake on the part of the respondents which did not give any right to petitioner to claim protection envisaged under Section 25-B of the Industrial Disputes Act dealing with deemed conditions of service and Section 25-F of the Industrial Disputes Act. As noted above, the definition of retrenchment envisaged under Section 2(o) excludes termination of services of the workman as a result of non-renewal of contract between employer and workman, this court is left with no option but to hold that petitioner continued to work as data entry operator purely on contract basis who was neither a daily wager nor a permanent employee.

13. Stepping into witness box as PW1 the petitioner has asserted his claim as maintained in the claim petition filed under Section 10 of Industrial Disputes Act alleging that the respondents despite having sufficient work had terminated his services. Consequently, in cross-examination, petitioner has admitted that he was appointed as a computer operator/data entry operator on the basis of contract and that agreements were made twice i.e. Ex. RA and Ex. RB. He has further admitted in his cross-examination that he had signed the agreement after understanding implication and correctness of conditions stipulated therein. He has further admitted that he was appointed under e-governance scheme in which only employees were kept on contract basis. He has admitted that Smt. Nirmla and Smt. Diksha who were also appointed with e-governance society had been removed from service on completion of agreement between respondents. Repudiating the evidence led by the petitioner, respondent has examined Sh. Suresh Jaswal, the then SDO (Civil) who had sworn an affidavit and explained the manner in which the petitioner was appointed per the terms and conditions of agreement of employment. Cross-examination of respondent by ld. counsel for the petitioner in no manner falsified the stand taken by respondents. Although RW1 admitted that petitioner has been removed from service without any notice but clarified by stating that he had been removed from service as agreement entered into between the respondent and petitioner had expired.

14. Ld. counsel for petitioner has also contended with vehemence that Smt. Nirmla and Smt. Diksha who were junior in service to him were still working with the respondents. In support of his contention he placed reliance upon cross-examination of RW1 in which he had admitted that Smt. Nirmla and Smt. Diksha were still working in 'Sugam Centre' and they were junior to petitioner. With the aid of said admission, the petitioner had made futile attempt to claim protection

under Section 25-G of the Industrial Disputes Act. On the contrary, the Id. Dy. D.A. for the respondent/State has contended that since the petitioner was removed from service on completion of agreement of employment, this plea was not available to petitioner. Otherwise also, from the admission made by respondents as RW1 nowhere stipulates that Smt. Diksha and Smt. Nirmal were still working were either regularized in service or that they were junior to him in seniority list prepared by respondents. It is not the case of petitioner that Smt. Diksha and Smt. Nirmal had been appointed ignoring seniority list and therefore when there is no seniority list particularly in view of the fact that the services of petitioner was purely on contract basis, it would be erroneous to conclude that petitioner was denied the benefit of Section 25-H of the Industrial Disputes Act rather from evidence on record, it could not be concluded with certainty that Smt. Diksha and Smt. Nirmal who were junior to petitioner were regularized in service as petitioner has maintained that he had himself completed 240 days but in view of the fact that his terms and conditions of services were to be governed by agreements Exts. RA and RB as referred above, it is held that respondent while terminating the services of petitioner had not factually abrogated of Section 25-G of the Industrial Disputes Act rather this provision did not apply in present case. Accordingly, for the aforesaid reasons, issue no.1 is answered in negative against the petitioner and in favour of respondents.

ISSUE NO. 2

15. Id. Dy. D.A. representing the respondents had contended with vehemence that claim petition is not maintainable in view of the fact that petitioner was not removed from service in violation of provisions of Section 2(oo) clause (bb) of the Industrial Disputes Act which provided that retrenchment means termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted of disciplinary action did not include termination as a result of non-renewal of the contract between the employer and workman concerned on its expiry or such contract being terminated. As discussed in foregoing paras that the appointment of petitioner was purely on contract basis as is evident from Exts. RA and RB and that petitioner was not entitled to the protection envisaged under Section 25-F of the Industrial Disputes Act in view of the definition under Section 2 (oo), it is held that the claim petition is not maintainable in the present form. This issue is decided in favour of respondents and against petitioner.

ISSUE NO. 3

16. In view of findings in foregoing paras, it cannot be stated that petitioner has not come to court with clean hands. Thus objection being not specific but being vague merits rejection. As such, issue no.3 is decided in negative in favour of petitioner and against respondents.

RELIEF :

17. As a sequel to my findings on the issues no. 1 & 2, the instant claim petition is dismissed. However, the parties are left to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 81/2012
Date of Institution : 06.01.2012
Date of decision : 30.06.2015

Shri Jhali Ram Thakur s/o Shri Kapur Singh, r/o Village Kathyari, P.O. Ballu, Sub Tehsil
Aut, District Mandi, H.P. ...*Petitioner.*

Versus

M/S International Roerich Memorial Trust through its Manager, Village and P.O. Naggar,
Tehsil Manali, District Kullu, H.P.

M/S International Roerich Memorial Trust through its Treasurer-cum-Deputy
Commissioner, Kullu, Village and P.O. Naggar, Tehsil Manali, District Kullu, H.P. ...*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Satish Kaushal, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the action of the management of (1) M/S International Roerich Memorial Trust through its Manager, Village and P.O. Naggar, Tehsil Manali, District Kullu, H.P. (2) M/S International Roerich Memorial Trust through its Treasurer-cum-Deputy Commissioner, Kullu, Village and P.O. Naggar, Tehsil Manali, District Kullu, H.P. to terminate the services of Shri Jhali Ram Thakur S/O Shri Kapur Singh, Village Kathyari, P.O. Ballu, Sub Tehsil Aut, District Mandi, H.P. as Gardner w.e.f.05-01-2010 vide notice dated 05-12-2009 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner was appointed as Mali/Gardner by respondent no.2 Deputy Commissioner, Kullu vide letter no. 228 dated 6th January, 2003 @ Rs.2100/- per month for period of two years in pursuance to which petitioner had joined on 8th January, 2003. The case of the petitioner further remains that period of two years had elapsed on 5.1.2005 but even thereafter petitioner continued to work with respondents without any written letter or contract letter and thus without any break, petitioner continued to work upto 5th January, 2010. It is alleged that during the period aforesaid conduct of petitioner was satisfactory who worked diligently. It is alleged that vide letter no. IRMT 2009-10/070 dated 5th December, 2009 one month notice was given by respondent no.2 terminating services of petitioner. The grievance of petitioner further remains that no retrenchment compensation envisaged under Section 25-F (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) was given, no information was given to appropriate government under Section 25-F (c) and thus termination of petitioner was stated to be illegal, void abinitio. Not only this, petitioner is stated to have completed 240 days in each calendar year as well as even in proceedings 12 months prior to his termination on 5.1.2010. It is further alleged that respondents had also violated the provisions of Section 25-G of the Act as Rewat Ram who joined on 13.7.2005 and Gokal Chand who joined on 1.10.2005 with the respondents had been retained in service who were junior to petitioner and that the services of petitioner had been arbitrarily terminated. It is further stated that Board of Trustees had taken decision in the fifth meeting of Board held on 6.7.2006 under Chairmanship of the worthy Chief Minister of Himachal Pradesh in which it was decided that the trust being non governmental organization, its every employee had to sign contract to their services and on the basis of such decision having been taken by the Board of Trustees, respondent no.2 Deputy Commissioner, Kullu had pressurized petitioner to sign contract regarding the services. It is alleged that respondent management could not have changed the service conditions of its employee with prior notice under Section 9-A of Schedule IV of Industrial Disputes Act besides trust has its own bye-laws service rules for its employee wherein no clause has been mentioned to appoint employee on contract basis and that Model Standing Order Act, 1946 is also applicable to the respondent which is not followed by the respondents as the direction given by Board of Trustees to amend the service rules of its employees and that complying the same respondent could not have pressurized employees working to sign any type of contract. It is claimed that employees have their own association and that petitioner was the active member whose services have been deliberately terminated on 5.1.2010 and on termination of services, he served a demand notice to respondent under Section 2-A of the Act on 27th January, 2010. Thus, the act of respondents who changed the service conditions of petitioner and finally terminating on 5.1.2010 stated to be arbitrary, unjustified and unconstitutional and the same was liable to be set aside. It is further contended by petitioner that he was still unemployed and not gainfully employed any where after his illegal termination dated 5.1.2010 and that petitioner is entitled to full back wages on this score besides maintained at the time when he was removed from service petitioner was getting salary of Rs.3780/- per month. Claimant/petitioner, thus, prays for setting aside the termination order dated 5.1.2010 with further direction to the respondent to reinstate petitioner with full back, wages in continuity of service & all other consequential service benefits.

4. Respondents resisted the claim petition filed, joint reply inter alia taken preliminary objections qua maintainability on the ground that respondent no.1 being trust was not industry within the meaning of Section 2 (j) of the Act and that a dispute was not legally sustainable between the petitioner and the respondents. On merits, petitioner is stated to have been assigned job of gardener but was purely on temporary nature fixed for limited period for two years. It is alleged that after expiry of contract, petitioner could not have continued until a fresh contract was made. It is claimed that petitioner was asked time and again by the respondents to sign the contract but petitioner continued to avoid execution of fresh contract. It has been emphatically denied that respondent no. 2 had ever pressurized petitioner or any one else coercing them to sign fresh

agreement and thus denied change of service conditions of petitioner. Thus, denying cause of action claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, tendered/proved his affidavit Ex. PW1/A, Ex. PW1/B is the seniority list of IRMT workers and closed evidence. On the other hand, repudiating the evidence led by petitioner, the respondents had examined Shri Kunal Brahma, Manager IRMT Naggar Distt. Kullu, H.P. tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B is the notice of termination of petitioner, Ex. RW1/C and D are the copies of letter dated 5.3.2010 and 23.2.2010, Ex. RW1/E is the copy of notice dated 11th November, 2009 and Ex. RW1/F is the copy of appointment order of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner as well as for respondents, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. predecessor on 6.3.2013 for determination:

Whether the termination of the services of the petitioner by the respondents w.e.f. 05.01.2010 is illegal and unjustified as alleged? ...*OPP.*

Whether the claim petition is not maintainable in the present form? ...*OPR.*

Whether this court has no jurisdiction to hear and decide the matter? ...*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. It is admitted case of the parties that claimant/petitioner was appointed as Mali i.e. gardener by respondent no.2 vide letter no.228 dated 6.1.2003 @ Rs.2100/- per month initially for period of two years in pursuance to which petitioner had joined on 8.1.2003 with the respondents. It is equally admitted case of the parties that petitioner continued to working on the same post and same emoluments from 2005 to 2010 when the services of petitioner had been terminated on 5.1.2010 preceded by letter no. IRMT 2009-10/070 dated 5th December, 2009. Ex. RW1/B is notice dated 5th December, 2009 qua termination of services of petitioner in the event he failed to sign agreement of service. It is equally admitted case of the respondents that no notice or

compensation in lieu thereof was ever given to petitioner prior to his termination. At the same, it is also admitted case of the respondents that petitioner had worked for more than 240 days in a calendar year and his services were terminated by respondent without any compensation. Another plea set forth by petitioner remains that respondent had violated the provisions of Section 25-G of the Act while retaining Rewat Ram who joined on 13.7.2005 and Gokal Chand who joined on 1.5.2010 respectively whereas petitioner had joined on 8.1.2003 much earlier to other employees named above.

11. RW1 Kunal Brahma, Manager IRMT the only witness of the respondents has specifically admitted on oath that petitioner had worked without any break from 2005 to 2010 besides stated that no agreement whatsoever had been written during period mentioned above. Not only this, RW1 Kunal Brahma has also admitted that Rewat Ram and Gokal Chand were junior to petitioner who were still in service whereas the services of petitioner had been terminated without any rhyme or reason but from the corresponding evidence on record, it is revealed that petitioner was asked time and again to sign the fresh agreement by the respondent and on his failure to sign agreement his services seems to have been terminated. In the backdrop of foregoing facts in evidence, claim of the claimant needs to be adjudicated.

12. Ld. counsel representing respondents has contended with vehemence that respondent no.1 is a "trust" which is not covered in the definition of "industry" and thus the provisions of Industrial Disputes Act cannot be invoked with regard to disputes of its employees. Ld. Authorized Representative/counsel for petitioner, on the other hand, has repudiated the arguments of ld. counsel for respondents placing reliance on judgment of Hon'ble Apex Court reported in **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548**, in which the Hon'ble Court has categorically held that **the nature of activity is the determining factor and that does not change according to who undertakes**. It was observed by the Hon'ble Apex Court that there is no justification for excepting the categories of public utility activities undertaken by the government in exercise of its inalienable function under constitution called it regal or sovereign or by any other name from definition of industry. It was also observed that State today increasingly undertakes commercial functions and economic activities as part of duties as welfare state and to exclude state run industry from sphere of the Act would not be correct unless the statutory provisions expressly by necessary implication have that effect. Relevant para of the said judgment is reproduced below for reference:—

"A systematic activity which is organized or arranged in a manner in which the trade or business is generally organized or arranged would be an industry despite the fact that it proceeds from charitable motives. It is in the nature of the activity that one has to consider and it is upon the application of that test that the State's inalienable functions fall within the definition of industry. The very same principles must yield the result that just as the consideration as to who conducts the activity, is irrelevant for determining whether the activity is an industry so is the fact that the activity is charitable in nature or is undertaken with a charitable motive. The status or capacity corporate or constitutional, of the employer would have, if at all, closer nexus, than his motive on the question whether the activity is an industry. The motive which propels the activity is yet another step removed and ex hypothesie can have no relevance on the question as to what is the nature of the activity. It is never true to say that the nature of the activities is charitable. The subjective motive force of an activity can be charity but for the purpose of deciding whether an activity is an industry one has to look at the process involved in the activity, objectively. The jural foundation of any attempt to except charitable enterprises from the scope of the definition can only be that such enterprises are not undertaken for profit. But then, that clearly, is to introduce the profit concept by, side wind, a concept which has been rejected consistently over the years. If any principle can be said to be settled law in this vexed field it is this: the

twin consideration of profit motive and capital investment is irrelevant for determining whether an activity is an industry. **Therefore, activities which are dominated by charitable motives either in the sense that they involve the rendering of free or near free services or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of definition of section 2(j).** It is as much beside the point to inquire who is the employer as it is to inquire, why is the activity undertaken and what the employer does with the profits, if any [288C-H, 289A]”.

Applying the ratio of judgment referred to above, it would not be erroneous to conclude that respondent no.2 being charitable trust was factually managed and controlled by Manager of trust as well as by Treasurer-cum-Deputy Commissioner, Kullu and fell in the definition term ‘industry’ under Section 2(j) of Industrial Disputes Act.

13. In so far as the plea of respondents that petitioner was contractual employee whose services came to an end on completion of specific period could not claim benefit of a workman, it would be relevant to mention here that testimony of RW1 who stated that petitioner continued to work for **five years after contract period** had expired and there was no written contract between the petitioner and the respondents. Significantly, notice of termination Ex. RW1/B issued by Deputy Commissioner-cum-Treasurer clearly stipulates that petitioner having failed to sign the agreement/contract despite final notice dated 11.11.2009 his services were being terminating with one month’s notice from the notice dated 8.12.2009. Thereafter, the services of petitioner were terminated on 5.1.2010. Ex. RW1/C further shows that Manager IRMT, Naggar had intimated respondent no.2 in which he had different opinion from legal opinion given by the District Attorney concerned. It seems that District Attorney concerned had advised for payment of two months salary and issuance of a fresh notice under Section 25-O of the Act and RW1 while sending letter dated 5th March, 2010 had mentioned that since the petitioner had continued in his service after completion of two years without any agreement, there was no necessity for payment of two months salary. Ex. RW1/D is letter dated 23rd February, 2010 of respondent no.1 to respondent no.2. Ex. RW1/E is copy of letter dated 11.11.2009 vide which the respondent no.1 had asked petitioner giving final notice for signing contract which was not signed. It can be observed from the testimony of petitioner as well as respondents that petitioner continued to work after expiry of original contract for service of two years and thereafter no written contract/agreement was signed by claimant/petitioner and the respondent no.2 seems to have emphasized for written agreement **after about four years from the date of expiry of former agreement** but there is no explanation from the side of respondents under what circumstances even for four years petitioner was not called upon to sign agreement which goes to show that petitioner did not factually agree to working conditions and of wages being paid by respondents. It is not in dispute that notice for termination was given in the year 2009 i.e. on 5.9.2009 and it was stipulated in this notice that the services of petitioner shall deemed to have terminated on month thereafter i.e. 5.10.2009.

14. Ld. counsel for the petitioner relied upon the judgment of Hon’ble High Court of H.P. reported in **2014 (142) FLR 985** titled as **Gita Ram and H.P. Labour Court-cum-Industrial Tribunal and another** relevant para is given below:—

“Industrial Disputes Act, 1947-Sections 2(oo) (bb), 10(1) and 25-F-Retrenchment of workman chowkidar, workman was engaged as chowkidar in September 1994 by employer for sake of convenience. He worked upto 31.3.2000 and his services were terminated without complying with section 25-F of Act. Not paid any compensation nor any written termination order was issued to him. Persons junior to him were still working. Workman has completed 240 days preceding his retrenchment. He was not engaged against any project. He has not been put to notice at any stage in writing that his employment was in project. He was not served any notice nor paid any compensation. Thus retrenchment of workman was void ab initio”.

Applying ratio of the aforestated judgment, it can be safely held that retrenchment of petitioner was void ab initio for the reason that petitioner was not given notice for retrenchment envisaged under Section 25-F of Industrial Disputes Act. At the same time, no compensation in lieu of notice was paid. Even persons junior to petitioner were retained in violation of the provisions of Section 25-G of the Act. As such, for said reason also, the order of termination was not legally sustainable in the eyes of law. RW1 has admitted in cross-examination that after completion of two years services of petitioner came to an end of its own as per the appointment order Ex. RW1/F which stipulated service conditions and thereafter no further appointment letter was given to petitioner besides he has admitted that from January, 2003 to January, 2010, petitioner had worked minimum 240 days in each year. It can be safely held from foregoing discussion that respondents while terminating service of petitioner did not give one month's notice or salary in lieu thereof moreso when petitioner had completed 240 days in 12 calendar months preceding his termination.

15. Ld. counsel for petitioner has contended that petitioner has alleged in his claim petition that he remained unemployed and at the same time, he was not gainfully employed anywhere since his illegal termination dated 5.1.2010 and thus petitioner was entitled for full back wages besides he was getting Rs.3780/- per month as salary at the time of illegal termination. In reply to claim being unemployed and not gainfully employed, respondents in its reply has merely denied that in reply to para no.8. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A prayed for setting aside the termination order dated 5.1.2010 on the basis of notice dated 5.12.2009 and prayed for full back wages of Rs.3,780/- per month. It is pertinent to mention here that petitioner has failed to prove by any reliable evidence on record showing that he was actually drawing a sum of Rs.3,780/- as salary per month but there is admission of the respondent in its reply that petitioner was appointed on monthly salary of Rs.2100/- per month. This aspect has not been challenged by respondent either in their reply or in their evidence.

16. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court reported in **2014 LLR 673** titled as **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd.** in which Hon'ble Apex Court has held that if the applicant/workman was wrongfully terminated, **the burden of proving that he was gainfully employed lies on the employer and if burden of proof not discharged, workman would be entitled of full back wages.** In the case in hand, petitioner has led positive evidence stipulating therein that he was not gainfully employed after his illegal termination and that he has remained unemployed. There is no iota of evidence led by the respondent showing or establishing that petitioner was either gainfully employed or that he had been earning his livelihood. Thus, applying the ratio of above stated judgment of Hon'ble Apex Court in 2014 (supra) the petitioner would be entitled to full back wages. Same view was reiterated by Hon'ble Apex Court in another landmark judgment reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Hon'ble Apex Court has again reiterated that workman is entitled to reinstatement with full back wages if it is established that workman had completed 240 days and that no notice was given or compensation in lieu thereof was paid. The above said judgment has also another aspect of the matter is that if the employer/management had not complied any provisions of Sections 25-F, 25-G and 25-H of the Act the order of retrenchment/termination is void ab initio and claimant/petitioner would be entitled to full back wages. In view of the foregoing findings petitioner would be entitled for full back wages from the date of his illegal retrenchment till his reemployment or reengagement in pursuance to award passed by this Court. Accordingly, it is held that termination order dated 5.1.2010 the services of the petitioner by the respondents w.e.f. 5.1.2010 is not only illegal but also totally unjustified and same is liable to be quashed. Thus, issue no.1 is answered in affirmative in favour of the petitioner and against the respondents.

ISSUE NO. 2

17. Ld. counsel for respondents has contended with vehemence that claim petition is not maintainable in view of the fact that charitable trusts were not covered under the definition of industry. As has been discussed in the foregoing paras that charitable trusts are covered in the definition of industry, this court is left with no option but to hold petition was maintainable. Issue in hand is decided in favour of petitioner and against the respondents.

ISSUE NO. 3

18. This issue was not pressed by ld. counsel for the respondents at the time of arguments which is decided unpressed in favour of petitioner and against respondent.

RELIEF :

19. As sequel to my findings on foregoing issues, the reference/claim petition is allowed. The respondents are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination on 5.01.2010. Petitioner is also entitled to back wages from the date of his illegal termination along-with costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 01/2014

Date of Institution : 04.1.2014

Date of decision : 30.06.2015

Shri Roshan Lal s/o Shri Chhanga, r/o Village Deodhar, P.O. Jhatingri, Tehsil Padhar,
District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Roshan Lal, S/O Shri Chhanga, R/O Village Deodhar, P.O. Jhatingri, Tehsil Padhar, District Mandi, H.P. during 2004-2012 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. July, 2001 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 2001 to 2012 has been engaged and disengaged by Range Officer, Urla as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) and due to fictional breaks from 2001 till 2014, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of ‘Last come First go’ as the persons junior to him had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 2001 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and

respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.7.2009 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department in February, 1998 as casual labourer and not as daily waged forest worker w.e.f. 1.7.2001 as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department as per availability of work and funds upto 2006. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my ld. predecessor on 10.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? ..*OPP*.

Whether the claim petition is not maintainable in the present form? ..*OPP*.

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief: Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. He has specifically deposed on oath that from the year 2001 to 2012, his services had been engaged and disengaged by Range Officer, Urla for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 2000 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of February, 1998 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 28 days in the year, 2011, 150 days in 2010, 166 days in 2009, 127 days in 2008, 90 days in 2007 and 206 days in 2006. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.34 who is shown to have joined on 01.7.2001. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and

that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of July, 2001. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 28 days in the year, 2011, 150 days in 2010, 166 days in 2009, 127 days in 2008, 90 days in 2007 and 206 days in 2006 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2001 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Shyam Singh is admittedly junior to the petitioner per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh and that the respondent on oath has also admitted this fact, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has

also been held by Hon'ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1994 to 2011. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room. Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 02/2014

Date of Institution : 04.01.2014

Date of decision : 30.06.2015

Shri Chamaru Ram s/o Shri Kanhya Ram, r/o Village Trawn, P.O. Barot, Tehsil Padhar,
District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Chamaru Ram, S/O Shri Kanhya Ram, R/O Village Trawn, P.O. Barot, Tehsil Padhar, District Mandi, H.P. during 2006 to 2012 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. July, 2000 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 2000 to 2012 has been engaged and disengaged by Range Officer, Joginder Nagar as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and due to fictional breaks from 2000 till 2012, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of 'Last come First go' as the persons junior to him had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 1995 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.7.2008 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department in July, 2000 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department except in the month of March, 2003. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25 B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer

so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 10.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? . . .*OPP.*

Whether the claim petition is not maintainable in the present form? . . .*OPP.*

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS**ISSUE NO. 1**

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. He has specifically deposed on oath that from the year 2000 to 2012, his services had been engaged and disengaged by Range Officer, Joginder Nagar for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 2000 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co-workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of July, 2000 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 55 days in the year, 2014, 171 days in 2013, 184 days in 2012, 181 days in 2011, 152 days in 2010, 120 days in 2009, 117 days in 2008 and 31 days in 2007. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.32 who is shown to have joined on 01.7.2000. Cross examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of July, 2000. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 55 days in the year, 2014, 171 days in 2013, 184 days in 2012, 181 days in 2011, 152 days in 2010, 120 days in 2009, 117 days in 2008 and 31 days in 2007 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman Again there is no iota of evidence showing that the respondent had initiated any

action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2000 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of “continuous service” envisaged under Section 25-F of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Shyam Singh is admittedly junior to the petitioner per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh and that the respondent on oath has also admitted this fact, the principle of ‘Last come First go’ envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon’ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1994 to 2011. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of *Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another*, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 03/2014
Date of Institution : 04.1.2014
Date of decision : 30.06.2015

Smt. Meera Devi w/o Shri Sadhu Ram, r/o Village Roparu, P.O. Jhatingri, Tehsil Padhar,
District Mandi, H.P. . . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Meera Devi, W/O Shri Sadhu Ram, R/O Village Roparu, P.O. Jhatingri, Tehsil Padhar, District Mandi, H.P. during 1998-2011 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. July, 1994 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2011. The grievance of petitioner remains that the services of petitioner with the department from 1994 to 2011 has been engaged and disengaged by Range Officer, Urla as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’) and due to fictional breaks from 1994 till 2011, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of ‘Last come First go’ as the persons junior to her had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, she was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating her services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of

works and funds. It is also alleged that giving of fictional breaks to petitioner from 1994 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to her be treated and counted as period of continuity in service for the purposes of her regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.1.2003 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department in July, 1994 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work with the department as per availability of work and budget. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although she had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that she could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged herself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 10.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? . . . *OPP.*

Whether the claim petition is not maintainable in the present form? . . . *OPP.*

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . . *OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in her affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which she was engaged and continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. She has specifically deposed on oath that from the year 1994 to 2013, her services had been engaged and disengaged by Range Officer, Joginder Nagar for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1994 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that her co-workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that she had been appointed in the month of July, 1994 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 31 days in the year 2013, 47 days in 2012, 57 days in 2011, 92 days in 2010, 90 days in 2009, 146 days in 2006, 145 days in 2005 and 237 days in 2004. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.7 who is shown to have joined on 01.7.1994. Cross examination of petitioner as PW1 reveals that she was still employed with the respondent. She has

although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that she had been given fictional breaks and that persons who were junior to her were retained and she was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of October, 1995. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 31 days in the year 2013, 47 days in 2012, 57 days in 2011, 92 days in 2010, 90 days in 2009, 146 days in 2006, 145 days in 2005 and 237 days in 2004 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that the same has been made to escape liability qua claim of petitioner. It is nowhere in evidence of respondent that forest department has been declared or notified as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when she had absented from duty calling upon her to resume duty or explain the cause for her unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when she absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1994 to 2011 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

15. Another aspect of the case that it can not be lost sight appreciating evidence is that junior workmen were allowed to work and petitioner was disengaged. Examination of RW1 the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent. Similarly, Love Kumar had joined in service on 1.12.1998 and his services had been regularized from the date of 1st appointment i.e. 1.2.1998 with all consequential benefits of his services except payment of back wages as Shyam Singh is admittedly junior to the petitioner as per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh. Respondent in oath has admitted that Love Kumar who had joined on 1.2.1998 had worked for 231 days in the

year 1998, 203 days in 1999, 168 days in 2000 and that his services have been regularized in pursuance to Award dated 13.1.2005 passed by my predecessor-in-office. The plea of petitioner that principle of 'Last come First go' envisaged under Section 25-G of the Act has not been followed by respondent. Ld. AR/counsel for the petitioner has contended that applicability of Section 25-G of the Act it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year. That being so, the relief sought for by petitioner is liable to be given in view of violation of the provisions of Section 25-G of the Act. Thus, petitioner/claimant has succeed in establishing that fictional breaks had been given to her illegally by respondent due to which she could not complete 240 days in any calendar year more so when respondent had failed to prove allegation of abandonment. It is accordingly held that respondent had given fictional breaks time to time to the petitioner which is illegal and unjustified as has been come in the evidence. Since the petitioner herself has admitted in cross-examination that she was employed with the respondent so she could not be awarded back wages although she is entitled to continuity in service from the date of initial engagement as well as seniority except back wages. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted her services under Section 25-B of the Industrial Disputes Act. Otherwise also, there is no specifically mention that to what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks with the object that she did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which she is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to her of and on by the respondent through its subordinate official for which she raised industrial dispute. The fictional breaks are stated to have been given from 1998 to 2012. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. She shall, however, be considered for regularization by respondent at the time when her juniors have been

regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref No. : 32/2014

Date of Institution : 23.1.2014

Date of decision : 30.06.2015

Shri Biri Singh s/o Shri Khayali Ram, r/o Village V.P.O. Harabag, Tehsil Joginder Nagar,
District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Biri Singh, S/O Shri Khayali Ram, R/O V.P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. during 2004 to

2012 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. January, 1995 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 1995 to 2012 has been engaged and disengaged by Range Officer, Joginder Nagar as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and due to fictional breaks from 1995 till 2012, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of 'Last come First go' as the persons junior to him had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 1995 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.1.2006 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department in July, 1995 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department except the year 1996 and 2003. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly,

violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 12.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent during 2004 to 2012 is illegal and unjustified as alleged. If so, its effect? . . .*OPP.*

Whether the claim petition is not maintainable in the present form? . . .*OPP.*

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*

Whether the claim petition has become infructuous as alleged. If so, its effect? . . .*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief: Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. He has specifically deposed on oath that from the year 1995 to 2014, his services had been engaged and disengaged by Range Officer, Joginder Nagar for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1995 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co-workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of October, 1995 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 235 days in the year 2013, 157 days in 2012, 74 days in 2011, 61 days in 2010, 86 days in 2009, 159 days in 2008 and 220 days in 2007. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.8 who is shown to have joined on 07.01.1995. Cross examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of October, 1995. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 235 days in the year 2013, 157 days in 2012, 74 days in 2011, 61 days in 2010, 86 days in 2009, 159 days in 2008 and 220 days in 2007 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that the same has

been made to escape liability qua claim of petitioner. It is nowhere in evidence of respondent that forest department has been declared or notified as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued in 1996 and 2003. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1995 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

15. Another aspect of the case that it can not be lost sight appreciating evidence is that junior workmen were allowed to work and petitioner was disengaged. Examination of RW1 the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent. Similarly, Love Kumar had joined in service on 1.12.1998 and his services had been regularized from the date of 1st appointment i.e. 1.2.1998 with all consequential benefits of his services except payment of back wages as Shyam Singh is admittedly junior to the petitioner as per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh. Respondent in oath has admitted that Love Kumar who had joined on 1.2.1998 had worked for 231 days in the year 1998, 203 days in 1999, 168 days in 2000 and that his services have been regularized in pursuance to Award dated 13.1.2005 passed by my predecessor-in-office. The plea of petitioner that principle of 'Last come First go' envisaged under Section 25-G of the Act has not been followed by respondent. Ld. AR/counsel for the petitioner has contended that applicability of Section 25-G of the Act it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year. That being so, the relief sought for by petitioner is liable to be given in view of violation of the provisions of Section 25-G of the Act. Thus, petitioner/claimant has succeed in establishing that fictional breaks had been given to him illegally by respondent due to which he could not complete 240 days in any calendar year more so when respondent had failed to prove allegation of abandonment. It is accordingly held that respondent had given fictional breaks time to time to the petitioner which is illegal and unjustified as has been come in the evidence. Since the petitioner himself has admitted in cross-examination that he was employed with the respondent so he could not be awarded back wages although he is entitled to continuity in service from the date of initial engagement as well as seniority except back wages. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted his services under Section 25-B of the Industrial Disputes Act. Otherwise also, there is no specifically mention that to what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1998 to 2012. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 4

18. This issue was not pressed by the Ld. Dy. D.A. at the time of arguments which is decided unpressed in favour of petitioner and against respondent.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 33/2014

Date of Institution : 23.1.2014

Date of decision : 30.06.2015

Shri Sohan Lal s/o Shri Ganga Ram, r/o Village Kraladhi, P.O. Urla, Tehsil Padhar, District
Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sohan Lal, S/O Shri Ganga Ram, R/O Village Kraladhi, P.O. Urla, Tehsil Padhar, District Mandi, H.P. during 2006 to 2012 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. April, 2005

without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 2005 to 2012 has been engaged and disengaged by Range Officer, Joginder Nagar as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) and due to fictional breaks from 2005 till 2012, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of 'Last come First go' as the persons junior to him had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 2005 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.4.2013 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department on May, 2005 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department except the year 2006 and 2008. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available

with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 10.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? . . .*OPP* .

Whether the claim petition is not maintainable in the present form? . . .*OPP* .

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR* .

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief: Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS**ISSUE NO. 1**

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. He has specifically deposed on oath that from the year 2005 to 2012, his services had been engaged and disengaged by Range Officer, Urla for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1995 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of May, 2005 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 108 days in the year 2013, 96 days in 2012, 43 days in 2011, 182 days in 2010, 176 days in 2009, 182 days in 2008, 31 days in 2007, 69 days in 2006 and 91 days in 2005. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.85 who is shown to have joined on 01.4.2005. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of April, 2005. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 108 days in the year 2013, 96 days in 2012, 43 days in 2011, 182 days in 2010, 176 days in 2009, 182 days in 2008, 31 days in 2007, 69 days in 2006 and 91 days in 2005 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action

against workman Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2005 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of “continuous service” envisaged under Section 25-F of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Shyam Singh is admittedly junior to the petitioner per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh and that the respondent on oath has also admitted this fact, the principle of ‘Last come First go’ envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon’ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be

stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1994 to 2011. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of *Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another*, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent. RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 86/2014
Date of Institution : 24.2.2014
Date of decision : 30.06.2015

Shri Kali Dass s/o Shri Nath, r/o V.P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kali Dass, S/O Shri Nath, R/O V.P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. during 1998 to 2012 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what of amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. October, 1995 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 1995 to 2012 has been engaged and disengaged by Range Officer, Joginder Nagar as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’) and due to fictional breaks from 1995 till 2012, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of ‘Last come First go’ as the persons junior to him had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services

could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 1995 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.1.2006 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department on October, 1995 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department except the year 1996 and 2003. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not gets the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25- G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied b petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the

copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my ld. predecessor on 10.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? . .OPP.

Whether the claim petition is not maintainable in the present form? . .OPP.

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . .OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. He has specifically deposed on oath that from the year 1995 to 2012, his services had been engaged and disengaged by Range Officer, Joginder Nagar for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1995 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co-workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of October, 1995 and was still working when the claim petition was filed. The contents

of said document revealed abstract of working mandays showing that petitioner to have worked for 229 days in the year 2013, 153 days in 2012, 122 days in 2011, 61 days in the years 2009 and 2010, 212 days in 2008 and 226 days in 2007. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.9 who is shown to have joined on 10.1.1995. Cross examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of October, 1995. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 229 days in the year 2013, 153 days in 2012, 122 days in 2011, 61 days in the years 2009 and 2010, 212 days in 2008 and 226 days in 2007 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that the same has been made to escape liability qua claim of petitioner. It is nowhere in evidence of respondent that forest department has been declared or notified as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued in 1996 and 2003. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1995 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

15. Another aspect of the case that it can not be lost sight appreciating evidence is that junior workmen were allowed to work and petitioner was disengaged. Examination of RW1 the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent.

Similarly, Love Kumar had joined in service on 1.12.1998 and his services had been regularized from the date of 1st appointment i.e. 1.2.1998 with all consequential benefits of his services except payment of back wages as Shyam Singh is admittedly junior to the petitioner as per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh. Respondent in oath has admitted that Love Kumar who had joined on 1.2.1998 had worked for 231 days in the year 1998, 203 days in 1999, 168 days in 2000 and that his services have been regularized in pursuance to Award dated 13.1.2005 passed by my predecessor-in-office. The plea of petitioner that principle of 'Last come First go' envisaged under Section 25-G of the Act has not been followed by respondent. Ld. AR/counsel for the petitioner has contended that applicability of Section 25-G of the Act it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year. That being so, the relief sought for by petitioner is liable to be given in view of violation of the provisions of Section 25-G of the Act. Thus, petitioner/claimant has succeed in establishing that fictional breaks had been given to him illegally by respondent due to which he could not complete 240 days in any calendar year more so when respondent had failed to prove allegation of abandonment. It is accordingly held that respondent had given fictional breaks time to time to the petitioner which is illegal and unjustified as has been come in the evidence. Since the petitioner himself has admitted in cross-examination that he was employed with the respondent so he could not be awarded back wages although he is entitled to continuity in service from the date of initial engagement as well as seniority except back wages. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted his services under Section 25-B of the Industrial Disputes Act. Otherwise also, there is no specifically mention that to what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1998 to 2012. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of *Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another*, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the

seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

| | |
|---------------------|--------------|
| Ref. No. | : 87/2014 |
| Date of Institution | : 24.2.2014 |
| Date of decision | : 30.06.2015 |

Shri Netar Singh, s/o Shri Khem Singh, r/o Village Mashwahan, P.O. Urla, Tehsil Padhar,
District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Netar Singh S/O Shri Khem Singh, R/O Village Mashwahan, P.O. Urla, Tehsil Padhar, District Mandi, H.P. during 2008 to 2012 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. March, 2003 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 2003 to 2012 has been engaged and disengaged by Range Officer, Joginder Nagar as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) and due to fictional breaks from 2003 till 2012, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of ‘Last come First go’ as the persons junior to him had been retained in service. The name of juniors are Smt. Urmla Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 2005 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.5.2011 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department on May, 2003 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is

claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 10.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? ..*OPP.*

Whether the claim petition is not maintainable in the present form? ..*OPP.*

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief: Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS**ISSUE NO. 1**

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. He has specifically deposed on oath that from the year 2003 to 2012, his services had been engaged and disengaged by Range Officer, Urla for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 2003 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of May, 2003 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 172 days in the year 2013, 122 days in 2012, 76 days in 2011, 132 days in 2010, 171 days in 2009, 60 days in 2008 and 30 days in 2006. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.48 who is shown to have joined on 01.5.2003. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of May, 2003. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 172 days in the year 2013, 122 days in 2012, 76 days in 2011, 132 days in 2010, 171 days in 2009, 60 days in 2008 and 30 days in 2006 and therefore when petitioner had served respondent for more than 200 days in

several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law. 13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2003 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Shyam Singh is admittedly junior to the petitioner per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh and that the respondent on oath has also admitted this fact, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1994 to 2011. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of *Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another*, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref No. : 242/2013

Date of Institution : 09.12.2013

Date of decision : 30.06.2015

Shri Dhameshwar Dutt alias Jeewan Singh, s/o Shri Mangat Ram, r/o Village Khund, P.O. Urla, Tehsil Padhar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dhameshwar Dutt alias Jeewan Singh, S/O Shri Mangat Ram, R/O Village Khund, P.O. Urla, Tehsil Padhar, District Mandi, H.P. during 1999 to 2011 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. May, 1998 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Urla upto 2012. The grievance of petitioner remains that the services of petitioner with the department from 1999 to 2011 has been engaged and disengaged by Range Officer, Joginder Nagar as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) and due to fictional breaks from 1999 till 2014, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional

breaks in the years aforesaid, respondent had not followed the principle of 'Last come First go' as the persons junior to him had been retained in service. The name of juniors are Smt. Urmila Devi w/o Shri Roop Lal who joined in 1.3.2000, Shri Shyam Singh s/o Shri Narain Singh who joined on 7.10.2008 and Shri Prem Singh s/o Shri Sardaroo Ram who joined in the year 2005 have been retained in service by the respondent. It is alleged that one Shri Love Kumar who was engaged on daily waged basis in the month of February, 1998 had been given fictional breaks but in the year 1999-2000, he was unlawfully terminated by the respondent and thereafter in the year 2005, his services have been reengaged by the department who has since been continuously working and his services have been regularized in the regular pay scale as forest worker. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 1999 to 2014 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. 1.5.2007 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department on May, 1999 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. It is alleged that Shri Prem Singh s/o Shri Sardaroo Ram had never worked with the department as casual labourer so the violation of provisions of Section 25-G of the Act did not arise. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the letter dated 31.8.2012 regarding

regularization of daily waged/contingent paid workers, Ex. PW1/C is copy of letter dated 20th July, 2011, Ex. PW1/D regarding terms and conditions for regularization of daily waged/contingent paid workers, Ex. PW1/E is the letter dated 4.9.2006, Ex. PW1/F is the copy of seniority list of daily wagers of Joginder Nagar Forest Division and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E is copy of letter dated 27.9.2008, Ex. RW1/F is the copy of mandays chart of Love Kumar, Ex. RW1/G is the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my ld. predecessor on 12.11.2014 for determination:

Whether time to time termination of services of the petitioner by the respondent during 2004 to 2012 is illegal and unjustified as alleged. If so, its effect? ..*OPP*.

Whether the claim petition is not maintainable in the present form? ..*OPP*.

Whether the petition is bad on account of delay and laches as alleged. If so, its effect? ..*OPR*.

Whether the claim petition has become infructuous as alleged. If so, its effect? ..*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : Unpressed

Relief: Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Joginder Nagar upto 2012. He has specifically deposed on oath that from the year 1999 to 2011, his services had been engaged and

disengaged by Range Officer, Joginder Nagar for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1999 till today, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co-workers namely Ram Singh, Hari Ram, Sharu Ram, Piar Chand and Surat Ram were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of May, 1999 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 118 days in the year 2013, 123 days in 2012, 118 days in 2011, 150 days in the years 2010, 179 days in 2009, 151 days in 2008 and 153 days in 2007. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.28 who is shown to have joined on 01.5.1999. Cross examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of May, 1999. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 118 days in the year 2013, 123 days in 2012, 118 days in 2011, 150 days in the years 2010, 179 days in 2009, 151 days in 2008 and 153 days in 2007 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as

petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1999 to 2011 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of “continuous service” envisaged under Section 25-F of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Shyam Singh is admittedly junior to the petitioner per contents of Ex. RW1/E which is the letter of Conservator of Forest for appointment of Shyam Singh and that the respondent on oath has also admitted this fact, the principle of ‘Last come First go’ envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon’ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its

subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1994 to 2011. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of *Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another*, (1999) 6 SCC 82. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 4

18. This issue was not pressed by the ld. Dy.D.A. at the time of arguments which is decided unpressed in favour of petitioner and against respondent.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2015.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

LANGUAGE, ART AND CULTURE DEPARTMENT

NOTIFICATION

Shimla-2, the 26th August, 2015

No. LCD- C (10) - 4/2015.—The Governor, Himachal Pradesh is pleased to re-constitute the District level Kullu Dusshera Festival Committee for the celebration of International Kullu Dussehra Festival consisting of the following members:—

Official Members

- | | | |
|----|---|----------|
| 1. | The Deputy Commissioner, Kullu, H.P. | Chairman |
| 2. | Sh. Ram Swaroop Sharma, Member of Parliament, Distt. Kullu, H.P. | Member |
| 3. | Sh. Govind Singh Thakur, MLA, Manali Constituency, Distt. Kullu, H.P. | Member |
| 4. | Sh. Maheshwar Singh, MLA, Kullu Constituency, Distt. Kullu, H.P. | Member |
| 5. | Sh. Karan Singh, MLA, Banjar Constituency, Distt. Kullu, H.P. | Member |
| 6. | Sh. Khub Ram, MLA, Anni Constituency, Distt. Kullu, H.P. | Member |
| 7. | Chairman, Zila Parishad, Kullu, H.P. | Member |
| 8. | President, Nagar Parishad, Kullu, H.P. | Member |
| 9. | Vice President, Nagar Parishad, Kullu, H.P. | Member |

Non- Official Members

- | | | |
|----|--|--------|
| 1. | President, Zila Kardar Sangh, Distt. Kullu, H.P. | Member |
| 2. | Advisor, Zila Kardar Sangh, Distt. Kullu, H.P. | Member |

This Committee is re-constituted for a period of two years. The T.A/D.A of the non- official members will be borne by the Dussehra Committee as per the instruction of the Government from time to time.

By order,
Sd/-
Secretary (LAC).

ब अदालत श्री विशन सिंह ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी, तहसील शिमला ग्रामीण,
जिला शिमला (हि0 प्र0)

मुकदमा नं0 09-X/2014

तारीख मरजुआ : 11-03-2015

तारीख पेशी : 10-09-2015

- | | | |
|----|---|------------|
| 1. | Miss कृष्णा पुत्री धर्म सिंह निवासी Bali Mohal Batari, Sub-Tehsil Nihri, District Mandi, H.P. | ..प्रार्थी |
| 1. | श्री मोहन लाल पुत्र शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0 | |
| 2. | श्री प्रेम सिंह पुत्र शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0 | |

3. श्री जय सिंह पुत्र शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
4. श्रीमती बिमला पुत्री शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
5. श्रीमती मीरा देवी पुत्री शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
6. श्रीमती शकुन्तला पुत्री शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0।
7. श्रीमती दर्शनू विधवा शिव राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
8. श्री अशोक पुत्र जोगिन्द्र सिंह, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
9. श्रीमती सीमा पुत्री जोगिन्द्र सिंह, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
10. श्रीमती सरस्वती विधवा जोगिन्द्र सिंह, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0।
11. श्री रमेश पुत्र मोती राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
12. श्रीमती गीता पुत्री मोती राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
13. श्रीमती कमलेश पुत्री मोती राम, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
14. श्री नारायण सिंह पुत्र देवी सरण, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
15. श्री हरी सिंह पुत्र देवी सरण, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
16. श्रीमती बिमला पुत्री देवी सरण, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
17. श्रीमती शारदा पुत्री देवी सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
18. श्री मदन सिंह पुत्र देवी सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
19. श्री प्रताप सिंह पुत्र राम सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
20. श्री सुरन्द्र कुमार पुत्र राम सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
21. श्रीमती शकुन्तला देवी पुत्री राम सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0।
22. श्रीमती मीरा देवी पुत्री राम सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0
23. श्रीमती निलमा देवी पुत्री राम सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0।
24. श्रीमती पुष्पा पुत्री राम सरन, निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0

इश्तहार

सर्व Miss कृष्णा पुत्री धर्म सिंह, निवासी Bali Mohal Batari, Sub-Tehsil Nihri, District Mandi, H. P. हाल निवासी गनोटी, तहसील शिमला ग्रामीण, जिला शिमला, हिमाचल प्रदेश ने इस न्यायालय में प्रार्थना पत्र बराये जेर धारा 123 के अन्तर्गत भू-विभाजन हेतु अराजी खाता नं0/खतौनी नं0 5/17 से 26 किता 55, तादादी रक्वा 03-81-02 हैक्टेयर वाका चक गनोटी, तहसील व जिला शिमला, हि0 प्र0 बारे प्रस्तुत किया है। जिसमें उपरोक्त प्रतिवादी नं0 9, 14, 15, 16, 17, 20, 21, 22 की तामील हेतु कई बार अदालत द्वारा समन जारी किये गये परन्तु अदम तामील व अधूरा पता होने के कारण मालूम न हो सकी। जिससे यह प्रतीत होता है प्रतिवादीगण जानबूझ कर उपरोक्त मुकद्दमा में पेश न हो रहे हैं।

अतः अदालत को विश्वास हो चुका है कि उपरोक्त प्रतिवादी नं0 9, 14, 15, 16, 17, 20, 21, 22 की तामील साधारण तरीके से होना मुश्किल है। अतः इश्तहार द्वारा सूचित किया जाता है कि यदि किसी को भी उपरोक्त मुकद्दमा भू-विभाजन बारे कोई उजर व एतराज हो तो स्वयं व लिखित तौर पर दिनांक

10-09-2015 को अपराह्न 2.00 बजे हाजिर अदालत कोर्ट परिसर चक्कर में आकर अपना एतराज पेश करे अन्यथा एकतरफा कार्यवाही अमल में लाई जायेगी।

आज दिनांक 24-08-2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
शिमला ग्रामीण, जिला शिमला (हि0 प्र0)।